

SUMMONS (CITACION JUDICIAL)

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

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

THE CAREWELL COMPANY; ROBERT COLEMAN, an individual; MARIE COLEMAN, an individual; and DOES 1 TO 100

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MARIA VICTORIA PALERIA

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court, County of Solano
600 Union Avenue, Fairfield, CA 94533

CASE NUMBER: (Número del Caso):

FCS055454

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):

Allan A. Villanueva; 6701 Koll Center Parkway, Suite 250, Pleasanton, CA 94566 (925) 968-4326

DATE:
(Fecha)

OCT 1 2020

Clerk, by
(Secretario)

J. Abueg, 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).)

[SEAL]

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)

1 Allan A. Villanueva, SBN 163480
2 Law Office of Allan A. Villanueva
3 6701 Koll Center Parkway, Suite 250
4 Pleasanton, CA 94566
5 Telephone (925) 968-4326
6 Facsimile (650) 479-3086

FILED/ENDORSED
Clerk of the Superior Court

OCT -1 2020

By J. Ables
DEPUTY CLERK

5 Attorney for Plaintiff
6 MARIA VICTORIA PALERIA

ASSIGNED TO
JUDGE ~~CHRISTINE CARRINGER~~
FOR ALL PURPOSES

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SOLANO

10 MARIA VICTORIA PALERIA,

11 Plaintiff,

12 v.

13 THE CAREWELL COMPANY; ROBERT
14 COLEMAN, an individual; MARIE
15 COLEMAN, an individual; and DOES 1
16 TO 100,

17 Defendants.

Case No.

FCS055454

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND PENALTIES:**

1. FAILURE TO PAY MINIMUM AND OVERTIME WAGES;
2. LIQUIDATED DAMAGES UNDER LABOR CODE §1194.2;
3. FAILURE TO PROVIDE PROPER ITEMIZED WAGE STATEMENTS;
4. UNLAWFUL BUSINESS PRACTICES IN VIOLATION BUS. AND PROF. CODE §17200
5. PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

21 Plaintiff alleges:

PARTIES AND COMMON ALLEGATIONS

- 23 1. Plaintiff MARIA VICTORIA PALERIA is an adult individual.
- 24 2. Defendants ROBERT COLEMAN and MARIE COLEMAN are adult individuals.
- 25 3. Plaintiff is informed and believes and thereon alleges that she was employed by Defendants
- 26 THE CAREWELL COMPANY, ROBERT COLEMAN, MARIE COLEMAN, and DOES 1 to 100
- 27
- 28

1 as a caregiver to work at care homes owned, administered, managed and operated by Defendants.

2 4. Plaintiff is informed and believes and thereon alleges that Defendants own, administer,
3 manage and operate at least eight care homes in the Bay Area, to include locations in the cities of
4 Vacaville, Suisun and Davis.

5 5. Plaintiff is informed and believes and thereon alleges that defendant THE CAREWELL
6 COMPANY was and is a corporation registered to transact business in California.

7 6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 to
8 100, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiff will amend this
9 complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
10 believes and thereon alleges that each of these fictitiously named Defendants is responsible in some
11 manner for the occurrences herein alleged, and that Plaintiff' damages as herein alleged were
12 proximately caused by the aforementioned Defendants.

13 7. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
14 Defendants THE CAREWELL COMPANY, ROBERT COLEMAN, MARIE COLEMAN, and
15 DOES 1 to 100 were employers within the meaning of wage and hour laws including but not limited
16 to California Labor Code §§558.1, 1194 and Wage Orders of the Industrial Welfare Commission and
17 codified in the applicable regulations.

18 8. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned each
19 of the Defendants was the agent, employee, partner and/or representative of each of the remaining
20 Defendants and, in doing the things hereinafter alleged, was acting within the course and scope of
21 such agency and employment. Plaintiff are further informed and believe, and thereon allege, that
22 each of the Defendants herein gave consent to, ratified, and authorized the acts alleged herein to each
23 of the remaining Defendants.

24 9. Plaintiff is informed and believes and thereon alleges that if Defendants DOES 1 to 100 were
25 not agents, employees, partners, and/or representatives acting within the course of their relationship
26 with Defendants THE CAREWELL COMPANY, ROBERT COLEMAN, MARIE COLEMAN, said
27

1 Defendants were acting in their independent capacities as individual Defendants.

2 10. At all times relevant, Defendants ROBERT COLEMAN, MARIE COLEMAN, and Does 1
3 to 50, controlled, managed and manipulated the affairs of Defendants THE CAREWELL
4 COMPANY, and/or DOES 51 to 100 for their own financial advantage and to the financial detriment
5 of Plaintiff. They willfully and fraudulently and regularly violated the laws, regulations and orders
6 governing wages, hours and working conditions of Plaintiff and all employees similarly situated
7 such that it became the policy, custom and practice of THE CAREWELL COMPANY and/or Does
8 51 to 100. They failed to: 1) pay proper overtime and minimum wages; 2) record, maintain and
9 provide true and accurate employee time and pay records; and/or 3) provide true and proper itemized
10 wage statements.

11 11. Based upon their dealings, there existed a unity of interest and ownership between THE
12 CAREWELL COMPANY and/or Does 51 to 100 and ROBERT COLEMAN, MARIE COLEMAN
13 and Does 1 to 50, such that the individuality or separateness of the corporation / entities and these
14 persons did not in reality exist. The Court should pierce the corporate veil because THE
15 CAREWELL COMPANY and/or Does 51 to 100 was and is the alter ego of ROBERT COLEMAN,
16 MARIE COLEMAN and Does 1 to 50.

17 12. Under the particular circumstances, recognition of THE CAREWELL COMPANY and/or
18 Does 51 to 100 as legal entities, separate and distinct from ROBERT COLEMAN, MARIE
19 COLEMAN and Does 1 to 50, with separate and distinct liabilities and obligations, would permit the
20 corporate form or other entity form to be used by ROBERT COLEMAN, MARIE COLEMAN and
21 Does 1 to 50 to promote fraud and injustice, and to avoid personal liability to Plaintiff and all
22 similarly situated employees for intentional and fraudulent violations of California wage and hour
23 laws.

24 13. To prevent fraud, injustice and abuse of the corporate privilege in this particular action,
25 Plaintiff seeks a finding that THE CAREWELL COMPANY and/or DOES 51 to 100 are, and at all
26 times relevant was the alter ego of ROBERT COLEMAN, MARIE COLEMAN and/or DOES 1 to
27

1 50, that the corporate or other entity identity of THE CAREWELL COMPANY and/or DOES 51 to
2 100 should be disregarded, and that ROBERT COLEMAN, MARIE COLEMAN, and/or DOES 1 to
3 50 should be held personally liable to Plaintiff for the acts and liabilities of their company and other
4 entities that employed Plaintiff.

5 **FIRST CAUSE OF ACTION**

6 **PLAINTIFF AGAINST ALL DEFENDANTS FOR FAILURE TO PAY MINIMUM WAGES**
7 **AND OVERTIME WAGES**

8 14. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-13
9 of this complaint.

10 15. All references or citations to the Labor Code are references or citations to the California
11 Labor Code unless otherwise stated.

12 16. Labor Code §515(d)(2) states, "Payment of a fixed salary to a nonexempt employee shall be
13 deemed to provide compensation only for the employee's regular, non-overtime hours,
14 notwithstanding any private agreement to the contrary."

15 17. Labor Code §226.8 provides, "(a) It is unlawful for any person or employer to engage in any
16 of the following activities: (1) Willful misclassification of an individual as an independent
17 contractor."

18 18. Plaintiff was employed by Defendants from November 1, 2013 until the present. Her regular
19 rate of pay was \$12.25 per hour. Defendants willfully misclassified Plaintiff as an independent
20 contractor by paying her with checks with no withholdings. Plaintiff worked more than 8 hours per
21 day and/or more than 40 hours per week for which she was not paid.

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

27 20. Labor Code §1197 states, "The minimum wage for employees fixed by the commission or by
28

1 any applicable state or local law, is the minimum wage to be paid to employees, and the payment of
2 a lower wage than the minimum so fixed is unlawful. This section does not change the applicability
3 of local minimum wage laws to any entity.”

4 21. Labor Code §1198 provides that the employment of any employee for longer hours than
5 those fixed by the applicable wage order or under conditions of labor prohibited by the wage order is
6 unlawful.

7 22. Industrial Welfare Commission Wage Order No. 5-2001, which regulates the wages, hours
8 and working conditions of employees working in the “Public Housekeeping Industry,” was
9 applicable to and controlled Plaintiff’s employment with Defendants.

10 23. Labor Code §510 and §3(A) of Wage Order No. 5-2001 provides in pertinent part that any
11 employee who works more than 8 and up to 12 hours in one workday, and more than 40 hours in one
12 workweek, and who works the first 8 hours on the seventh consecutive day of work in a workweek,
13 shall be paid one and one-half (1 ½) times the employee’s regular rate of pay. In addition, any
14 employee who works more than 12 hours in one workday, and who works more than 8 hours on any
15 seventh day consecutive day of work in a workweek shall be compensated at the rate of no less than
16 twice the employee’s regular rate of pay.

17 24. Labor Code §206.5 states, “(a) An employer shall not require the execution of a release of a
18 claim or right on account of wages due, or to become due, or made as an advance on wages to be
19 earned, unless payment of those wages has been made. A release required or executed in violation of
20 the provisions of this section shall be null and void as between the employer and the employee.
21 Violation of this section by the employer is a misdemeanor. (b) For purposes of this section,
22 execution of a release includes requiring an employee, as a condition of being paid, to execute a
23 statement of the hours he or she worked during a pay period which the employer knows to be false.”
24 The Defendants required Plaintiff to execute such releases in violation of Labor Code §206.5.

25 25. Defendants failed to pay Plaintiff minimum wages and overtime compensation in amount
26 according to proof.

1 26. Pursuant to Labor Code §§1194(a), 1194.2(a), 2802(b), and Civil Code §§3287(a) and
2 3289(b), and for the three year period immediately preceding the filing of her complaint, Plaintiff
3 requests interest at the legal rate of 10 percent per annum on all unpaid wages from the date such
4 wages were due until payment.

5 27. Plaintiff has incurred and will continue to incur expenses for attorney's fees and costs in
6 prosecuting this action. Pursuant to Labor Code §1194(a), Plaintiff request an award of reasonable
7 attorney's fees and costs.

8 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

9 **SECOND CAUSE OF ACTION**

10 **PLAINTIFF AGAINST ALL DEFENDANTS FOR LIQUIDATED DAMAGES UNDER**
11 **LABOR CODE §1194.2**

12 28. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-27
13 of this complaint.

14 29. Labor Code §1194.2(a) provides, "In any action under Section 98, 1193.6, 1194, or 1197.1 to
15 recover wages because of the payment of a wage less than the minimum wage fixed by an order of
16 the commission or by statute, an employee shall be entitled to recover liquidated damages in an
17 amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall
18 be construed to authorize the recovery of liquidated damages for failure to pay overtime
19 compensation."

20 30. Plaintiff worked for which she was not compensated the minimum wage in an amount
21 according to proof, for which Plaintiff is therefore owed liquidated damages.

22 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

23 **THIRD CAUSE OF ACTION**

24 **PLAINTIFF AGAINST ALL DEFENDANTS FOR FAILURE TO PROVIDE PROPER**
25 **ITEMIZED WAGE STATEMENTS UNDER LABOR CODE §226**

1 31. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-30
2 of this complaint.

3 32. Throughout her employment relationship, and in violation of Labor Code §226(a),
4 Defendants failed to provide Plaintiff with itemized written statements. These itemized wage
5 statements are required to be kept on file by the employer for at least three years at the place of
6 employment.

7 33. As a result of Defendants' failure to provide the required wage statements, Plaintiff is
8 deemed to suffer injury pursuant to Labor Code §226(e).

9 34. Pursuant to Labor Code §226(e)(1), An employee suffering injury as a result of a knowing
10 and intentional failure by an employer to comply with subdivision (a) is entitled to recover the
11 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
12 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
13 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
14 costs and reasonable attorney's fees.

15 35. Plaintiff was paid semimonthly and is therefore entitled to additional Labor Code §226
16 damages in the amount according to proof.

17 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

18 **FOURTH CAUSE OF ACTION**

19 **PLAINTIFF AGAINST ALL DEFENDANTS FOR UNLAWFUL BUSINESS PRACTICES**

20 36. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-35
21 of this complaint.

22 37. Such actions are unfair, unlawful or fraudulent in violation of California Business and
23 Professions Code §17200 et al.

24 38. Plaintiff seeks full restitution of monies according to proof, to restore any and all monies
25 withheld, acquired and/or converted by the Defendants by means of the unfair practices complained
26 of herein, and other injunctive and other relief allowed by law.

27 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

FIFTH CAUSE OF ACTION
PLAINTIFF AGAINST ALL DEFENDANTS
FOR PRIVATE ATTORNEYS GENERAL ACT PENALTIES

39. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-38, of this complaint.

40. Under the Private Attorneys General Act of 2006, Labor Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself or herself and other current or former employees, may recover penalties under any provision of the Labor Code that provides for civil penalties. These penalties are in addition to any other relief available under the Labor Code.

41. California Labor Code §226.3 provides, "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

42. As set forth above, Defendants have committed numerous violations for which the Labor Code provides for penalties, including violations of §§206.5, 226, 226.8, 510, 1174, 1194, 1197, 1197.1 and 1198.

43. On or about June 23, 2020, Plaintiff provided written notice by online filing to the Labor & Workforce Redevelopment Agency ("LWDA") and to defendants by certified mail of the legal claims and theories of this case. A true and correct copy of the notice is hereto attached as Exhibit A.

44. Plaintiff has not received notice from LWDA within 65 calendar days of the postmark date of Plaintiff's June 23, 2020 notice.

45. As a direct result of Defendants' conduct as described, Plaintiff is entitled to recover from Defendants, on her own behalf and on behalf of others similarly situated, the maximum civil penalties permitted by the Private Attorneys General Act, including penalties under Labor Code §§226.3, and for all violations of Labor Code §§ 206.5, 226, 226.8, 510, 1174, 1194, 1197, 1197.1 and 1198 as well as reasonable attorney's fees and costs.

1 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

2 1. For an award of compensatory damages in an amount according to proof at trial;

3 2. For an order to pay minimum wages, statutory premium pay, liquidated damages, and
4 penalties and interest according to proof at trial;

5 3. For penalties under Labor Code §2698 et seq., including penalties under Labor Code
6 §§226.3.

7 4. For an order requiring Defendants to make restitution of all revenues, earnings,
8 compensation and benefits obtained as a result of Defendants' wrongful conduct;

9 5. For preliminary and permanent injunctive relief prohibiting Defendants from
10 engaging in the wrongful practices alleged in this Complaint;

11 6. For an award of costs and reasonable attorneys' fees as permitted by law, including
12 but not limited to Labor Code §§1194(a), 226(e) and 2699;

13 7. For interest as permitted by law, including but not limited to Labor Code §§1194,
14 1194.2, 1197.1, 2802, and Civil Code §§3287 and 3289.

15 8. For such other and further relief as the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff herein demands trial by jury on all of the foregoing matters.

18 DATED: October 1, 2020

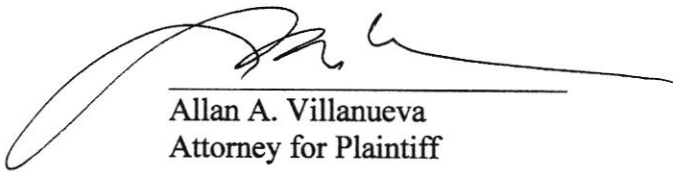
19 
20 Allan A. Villanueva
21 Attorney for Plaintiff
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27
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EXHIBIT A

TEL (925) 988-4326

FAX (925) 479-3086

VILLANUEVALAWOFFICE@GMAIL.COM

LAW OFFICE OF

ALLAN A. VILLANUEVA

6701 KOLL CENTER PARKWAY

SUITE 250

PLEASANTON, CALIFORNIA 94566

MEMBER OF THE BARS
CALIFORNIA AND HAWAII

VIA CERTIFIED MAIL

June 23, 2020

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(VIA ONLINE FILING)

Robert Coleman
5121 Valmar Court
Elk Grove, CA 95758

Marie Coleman
5121 Valmar Court
Elk Grove, CA 95758

Robert Coleman CEO
The Carewell Company
3069 Alamo Drive, #327
Vacaville, CA 95687

**RE: *MARIA VICTORIA PALERIA V. ROBERT COLEMAN; MARIE COLEMAN; THE
CAREWELL COMPANY***

**Complaint under California Labor Code §2698 et seq. (Private Attorneys
General Act of 2004)**

To Whom It May Concern:

This office represents ***MARIA VICTORIA PALERIA***. Please direct all communications to this office.

She is an aggrieved employee and is making claims under Cal. Labor Code §2698 et seq. on his behalf and other current or former employees of Defendants ROBERT COLEMAN, MARIE COLEMAN and THE CAREWELL COMPANY. Maria Victoria Paleria brings this PAGA claim on her behalf and other aggrieved employees (collectively "aggrieved employees").

The aggrieved employees are caregivers who were assigned to work at different residential care facilities for the elderly (RCFE) licensed by the State of California, Division of Community Care Licensing. Defendants own, administer, manage, and

operate these residential care facilities for the elderly where the aggrieved employees worked. Defendants own, administer, manage, and operate at least 8 RCFEs.

Defendants are employers under IWC Wage Order 16, *Martinez v. Combs* (2010) 49 Cal.4th 35 and under *Turman v. Superior Court of Orange Cnty.* (2017) 17 Cal.App.5th 969. Further Robert Coleman and Marie Coleman are alter egos of The Carewell Company. Robert Coleman and Marie Coleman are also employers under Cal. Labor Code §558.1, which provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term other person acting on behalf of an employer is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term managing agent has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

Complainant is informed and believes that both natural persons Robert Coleman and Marie Coleman are owners, directors, officers, or managing agents of The Carewell Company. Therefore, Robert Coleman and Marie Coleman are both employers. Cal. Labor Code §558.1.

Cal. Labor Code §226.8

Defendants willfully misclassified aggrieved employees as independent contractors and did not make payroll withholdings.

Labor Code §226.8 states, "(a) It is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor.

"(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

"(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law."

Cal. Labor Code §§510, 1194, 1195.5, 1197; IWC Wage Order 5, ¶3 and ¶4; 8 CCR 11050, ¶3 and ¶4

Since Defendants failed to keep records required by statute, "the consequences for such failure should fall on the employer, not the employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis for damages." *Hernandez v. Mendoza* (1988) 199 Cal. App. 3d 721, 727.

Labor Code §510 provides, "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code §1195.5 provides, "The Division of Labor Standards Enforcement shall determine, upon request, whether the wages of employees, which exceed the minimum wages fixed by the commission, have been correctly computed and paid. For this purpose, the division may examine the books, reports, contracts, payrolls and other documents of the employer relative to the employment of employees. The division shall enforce the payment of any sums found, upon examination, to be due and unpaid to the employees."

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

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". 8 CFR 785.17.

Defendants failed to pay the aggrieved employees overtime pay when they worked over eight hours per day, and/or over forty hours per week. Aggrieved employees are/were caregivers who worked 24 hour shifts, but were compensated for only 9 hours per day, and paid their regular rate of pay. They were not allowed to leave the facilities as they needed to monitor, supervise and attend to the needs of the residents 24 hours per day.

In sum, Defendants violated Cal. Labor Code §§510, 1194, 1197.

Cal. Labor Code §§1194.1 and 1194.2

Based on the same facts set forth above, since Defendants failed to pay aggrieved employees for any hours worked over 9 hours per day, they are liable for liquidated

damages and penalties a follows:

Cal. Labor Code §1197.1 provides:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Cal. Labor Code §1194.2(a) provides:

In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation.

Cal. Labor Code §206.5

As a condition of being paid, Defendants required aggrieved employees to execute a statement of hours Defendants knew to be false. Thus Defendants violated Labor Code §206.5, which states "Because as (a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null

and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.

"(b) For purposes of this section, execution of a release includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false."

Cal. Labor Code §226 and Labor Code §1174

Defendants DO NOT provide at all accurate itemized statements required by Cal. Labor Code §226. Section 226 requires, among other information:

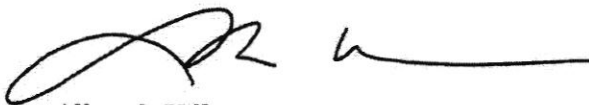
- (1) gross wages earned,
- (2) total hours worked by the employee, except as provided in subdivision (j),
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders 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 only the last four digits of his or her social security number or an employee identification number other than a social security number,
- (8) the name and address of the legal entity that is the employer and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Defendants further violated Labor Code §1174, which requires that payroll records show the accurate hours worked daily and the wages paid to the employees.

In sum, the aggrieved employees seek to bring a civil suit under Cal. Labor Code §2698 et seq. and seek all penalties allowed by law including but not limited to those set forth above and in Cal. Labor Code §§226.3 and 226.8.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Allan A. Villanueva', with a long horizontal flourish extending to the right.

Allan A. Villanueva