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

Nancy Ponzio, individually and as aggrieved  
employee pursuant to the Private Attorney  
General Act ("PAGA");

PLAINTIFF,

v.

Montclair Royale Senior Living, Inc., a  
California corporation; Jimmy Tang, an  
individual; and DOES 1 through 50, inclusive

DEFENDANTS

Case NO. CIVDS2021911

PAGA Enforcement Action;  
Complaint for Damages and Injunctive  
Relief for:

(1) Failure to Pay Off-the-Clock Hours  
(Labor Code §§ 1194, 1194.2 & 226.2, IWC  
Wage Order No.5);  
(2) Failure to Provide Paid Rest Periods and  
Pay Missed Rest Break Premiums (Labor  
Code §§ 226.7, 1198; IWC Wage Order No.  
5);  
(3) Failure to Provide Meal Periods and Pay  
Missed Meal Period Premiums (Labor  
Code §§ 226.7, 512, IWC Wage Order No.  
5);  
(4) Failure to Provide Complete Wage  
Statements (Labor Code § 226 And 226.2);  
(5) Failure to Reimburse Business Expenses  
(Labor Code § 2802);  
(6) Waiting Time Penalties (Labor Code §  
201-203);  
(7) Wrongful Termination;  
(8) Civil Penalties for Violations of  
California Labor Code, Pursuant to Labor  
Code §§ 2698 *et seq.*

**JURY TRIAL DEMANDED  
UNLIMITED JURISDICTION**

Action Filed: 10.06.2020  
Trial Date: None

Comes now PLAINTIFF NANCY PONZIO ("PLAINTIFF"), individually and on behalf of all other aggrieved employees as set forth herein, in this complaint ("Complaint") against DEFENDANTS JIMMY TANG, an individual, MONTCLAIR ROYALE SENIOR LIVING, INC., (the "Corporate Defendant") A California corporation and DOES 1 through 50, inclusive (collectively "DEFENDANTS") alleges upon personal knowledge as to herself and upon information and belief as to all other matters, based upon the investigation made by and through her attorneys, as follows:

### **JURISDICTION AND VENUE**

1. PLAINTIFF brings this action, seeking to recover unpaid compensation and statutory penalties for DEFENDANTS' failure to: provide meal breaks, provide rest breaks, pay overtime premiums, pay all compensation due and owing, pay compensation at time of termination/resignation/discharge, provide accurate wage statements, under California Labor Code sections: 201, 202, 203, 204, 207, 208, 210, 226, 226.7, 227.3, 510, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2699.5 and, Title 8 of the California Code of Regulations section 11050, sub-section 3. Hours and Days of Week, subsection 4. Minimum Wages, sub-section 7. Records, subsection 11. Meal Periods, subsection 12. Rest Periods; PLAINTIFF also seek pre-judgment interest and reasonable attorneys' fees and costs.

2. PLAINTIFF also bring an action for wrongful termination in violation of public policy;

3. PLAINTIFF is an individual, during the time periods relevant to this Complaint, employed by DEFENDANTS at DEFENDANTS' Montclair, California location.

1 4. Pursuant to Article VI, section 10 of the California Constitution, subject matter  
2 jurisdiction is proper in the Superior Court of California, County of San  
3 Bernardino, State of California.

4 5. Venue as to DEFENDANTS is proper in this judicial district pursuant to  
5 California Code of Civil Procedure sections 395(a) and 395.5 because  
6 DEFENDANTS' corporate office and principal place of business is located at 9685  
7 Monte Vista Ave, Montclair, CA 91763. PLAINTIFF's injuries occurred in the  
8 County of San Bernardino and/or because the DEFENDANTS operated and  
9 operates in the County of San Bernardino, California.

10 5.1. PLAINTIFF also bring this action under the Labor Code Private Attorneys  
11 General Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA") to  
12 recover civil penalties, unpaid wages, and any other available relief on behalf of  
13 PLAINTIFF, the State of California, and other current and former employees who  
14 worked for DEFENDANTS in California in a non-exempt position and against  
15 whom one or more violations of any provision in Article 4 Part 2 Chapter 1 of the  
16 Labor Code or any provision regulating hours and days of work in the applicable  
17 Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth  
18 in this Complaint, at any time between one year prior to the filing of PLAINTIFF's  
19 Notice to California Labor and Workforce Development Agency ("PAGA Notice")  
20 until judgment and/or any other provision of the California Labor Code, or one or  
21 more violations of any other provision in the Labor Code or applicable IWC Wage  
22 Order at any time between one year prior to the filing of this complaint until  
23 judgment ("Aggrieved Employees").

24 5.2. California Labor Code sections 2698 *et seq.*, the "Labor Code Private  
25 Attorneys Generals Act of 2004" ("PAGA"), authorize aggrieved employees to sue  
26 as private attorney general their current or former employers for various civil  
27 penalties for violating the California Labor Code.

**NATURE OF THE ACTION**

6. The acts complained of in this Complaint occurred, at least in part, within the last (4) years preceding the filing of this complaint.

7. At its California location, DEFENDANTS employ non-exempt, hourly workers under different job titles including, but not limited to, licensed nurses, nurse aides, cooks and dietary aides. All of DEFENDANTS' employees are subject to identical or nearly identical policies and procedures related to employee compensation.

8. During the relevant statutory period, PLAINTIFF worked as a cook for DEFENDANTS within the State of California.

9. At all relevant times PLAINTIFF, was former employee of DEFENDANTS and;

- a. Was not provided full 30 minutes, uninterrupted, off-duty meal periods;
- b. Was not provided rest periods;
- c. Was not paid overtime;
- d. Was not paid minimum wages for all time worked;
- e. Was not paid all compensation owed to her at the time of termination/resignation/discharge;
- f. Was not provided accurate wage statements;

10. DEFENDANTS operate a freight shipping and trucking company in California and at all relevant times were:

- a. The current and/or former employer of the PLAINTIFF;
- b. Failed to provide full 30 minutes, uninterrupted, off-duty meal periods;
- c. Failed to provide rest periods;
- d. Failed to pay overtime;
- e. Failed to pay minimum wages;
- f. Failed to pay all compensation owed to employees at the time of termination;
- g. Failed to provide accurate wage statements;

11. At all relevant times, MONTCLAIR ROYALE SENIOR LIVING, INC., was a company organized and existing under the laws of California and was and is doing business in California, with its corporate office and principal place of business located in Montclair, California.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendant Does 1 through 50, inclusive, are

1 unknown to PLAINTIFF who therefore sues these DEFENDANTS by such  
2 fictitious names pursuant to California Code of Civil Procedure section 474.  
3 PLAINTIFF will seek leave to amend this Complaint to alleges the true names and  
4 capacities of Does 1 through 50, inclusive, when they are ascertained.  
5 13. PLAINTIFF is informed and believe, and thereon alleges that the  
6 DEFENDANTS named in this Complaint, including Does 1 through 50, inclusive,  
7 are responsible in some manner for one or more of the events and happenings that  
8 proximately caused the injuries and damages hereinafter alleged.  
9 14. PLAINTIFF is informed and believes, and thereon alleges, that the  
10 DEFENDANTS named in this Complaint, including Does 1 through 50, inclusive,  
11 are, and at all times mentioned herein were, agents, servants, and/or employees of  
12 each of the other DEFENDANTS and that each defendant was acting within the  
13 course of scope of his, hers or its authority as the agent, servant and/or employee of  
14 each of the other DEFENDANTS. Consequently, all the DEFENDANTS are  
15 jointly and severally liable to PLAINTIFF, for the damages sustained as a  
16 proximate result of their conduct.  
17 15. PLAINTIFF is informed and believe, and thereon alleges, that the  
18 DEFENDANTS named in this Complaint, including Does 1 through 50, inclusive,  
19 are, and at all times mentioned herein were, owners, directors, officers, or  
20 managing agents of the Company who violated, or caused to be violated,  
21 provisions regulating minimum wages or hours and days of work in any order of  
22 the Industrial Welfare and Commission, sections 203, 226, 226.7, 1193.6, 1194,  
23 or 2802 of the Labor Code.

#### 24 **FACTUAL ALLEGATIONS**

25 16. In or about September 2019, PLAINTIFF found certain insanitary conditions  
26 and harmful practices existed at the kitchen where she worked, and she  
27  
28

1 immediately reported the insanitary conditions and harmful practices to her  
2 supervisor and the Corporate Defendant's management.

3 17. Following the report, PLAINTIFF repeatedly demand the Corporate  
4 Defendant's management to take remedial measure to address the issues she  
5 reported.

6 18. In or about October 2019, PLAINTIFF demanded to have an in-person meeting  
7 with the manager and administrator of the Corporate Defendant to make sure that  
8 the insanitary conditions and harmful practices be abated immediately so that the  
9 health of the patients who stayed at the facility would not be severely and  
10 continuously damaged.

11 19. On or about 11/13/2019, the DEFENDANTS terminated PLAINTIFF in  
12 retaliation of her reporting of the insanitary conditions and harmful practices  
13 existed at the facility damaging the health of the patients who stayed at the facility.

14 20. DEFENDANTS' termination of the PLAINTIFF was made in violation of a  
15 fundamental public policy well established and sufficiently clear to the  
16 DEFENDANTS at the time of PLAINTIFF's discharge.

17 21. DEFENDANTS terminated the PLAINTIFF in retaliation of her refusing to  
18 violate a statute, performing a statutory obligation, exercising a statutory right, or  
19 reporting an alleged violation of a statute of public importance.

20 22. DEFENDANTS' discharge of the PLAINTIFF violated well established  
21 fundamental and substantial public policies embodied in numerous federal, as well  
22 as state statutes, including, without limitation, Cal.Welf. & Inst.Code § 15600 et  
23 seq., ("The Elder Abuse and Dependent Adult Civil Protection Act"); Cal.Health &  
24 Safety Code § 1278.5 20 ("Whistleblower Protections for Healthcare Workers");  
25 Cal.Health & Safety Code § 1417 ("The Long-Term Care, Health, Safety, and  
26 Security Act of 1973.").

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1 23. DEFENDANTS never paid appropriate overtime premiums to PLAINTIFF and  
2 other Aggrieved Employees despite PLAINTIFF and other Aggrieved Employees  
3 often had to work more than 8 hours per day.

4 24. DEFENDANTS issued facially deficient wage statements to PLAINTIFF and  
5 other Aggrieved Employees.

6 25. The wage statements DEFENDANTS issued did not record the applicable  
7 hourly rate and total hours worked, they also omitted the social security numbers  
8 as required by law.

9 26. PLAINTIFF and other Aggrieved Employees suffered injuries as a result of the  
10 deficient wage statements.

11 27. PLAINTIFF is informed and believe, and thereon alleges, that at all times  
12 herein mentioned, DEFENDANTS were advised by skilled lawyers and other  
13 professionals, employees and advisors knowledgeable about California labor and  
14 wage law, employment and personnel practices, and about the requirements of  
15 California law.

16 28. PLAINTIFF is informed and believe, and thereon alleges, that PLAINTIFF and  
17 other Aggrieved Employees were not paid for all hours worked because all hours  
18 worked were not recorded.

19 29. PLAINTIFF is informed and believe, and thereon alleges, that DEFENDANTS  
20 knew or should have known that PLAINTIFF and other Aggrieved Employees  
21 were entitled to receive certain wages for overtime compensation and that they  
22 were not receiving certain wages for overtime compensation.

23 30. PLAINTIFF is informed and believe, and thereon alleges, that DEFENDANTS  
24 knew or should have known that PLAINTIFF and other Aggrieved Employees  
25 were entitled to receive at least minimum wages for compensation and that, in  
26 violation of the California Labor Code, they were not receiving at least minimum  
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1 wages for work that DEFENDANTS knew or should have known was performed  
2 off-the-clock.

3 31. PLAINTIFF is informed and believe, and thereon alleges, that DEFENDANTS  
4 knew or should have known that PLAINTIFF and other Aggrieved Employees  
5 were entitled to meal periods in accordance with the Labor Code or payment of  
6 one (1) additional hour of pay at their regular rates of pay when they were not  
7 provided with timely, uninterrupted, thirty (30) minute meal periods, and that  
8 PLAINTIFFS and other Aggrieved Employees were not provided with all meal  
9 periods or payment of one (1) additional hour of pay at their regular rates of pay  
10 when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

11 32. PLAINTIFF is informed and believe, and thereon allege, that DEFENDANTS  
12 knew or should have known that PLAINTIFFS and other Aggrieved Employees  
13 were entitled to rest periods in accordance with the Labor Code and applicable  
14 IWC Wage Order or payment of one (1) additional hour of pay at their regular  
15 rates of pay when they were not provided with a compliant rest period and that  
16 PLAINTIFF and other Aggrieved Employees were not provided compliant rest  
17 periods or payment of one (1) additional hour of pay at their regular rates of pay  
18 when they were not provided a compliant rest period.

19 33. PLAINTIFF is informed and believe, and thereon alleges, that DEFENDANTS  
20 knew or should have known that PLAINTIFF and other Aggrieved Employees  
21 were entitled to receive complete and accurate wage statements in accordance with  
22 California law. In violation of the California Labor Code, DEFENDANTS did not  
23 provide PLAINTIFF and other Aggrieved Employees with complete and accurate  
24 wage statements.

25 34. PLAINTIFF is informed and believe, and thereon alleges, that DEFENDANTS  
26 knew or should have known that PLAINTIFF and other Aggrieved Employees  
27 were entitled to timely payment of wages upon separation from employment.  
28

1 35. In violation of the California Labor Code, DEFENDANTS did not pay  
2 PLAINTIFF and other Aggrieved Employees all wages due, including, but not  
3 limited to, overtime wages, minimum wages, and meal and rest period premium  
4 wages, within permissible time periods.

5 36. PLAINTIFF is informed and believe, and thereon alleges, that DEFENDANTS  
6 knew or should have known that they had a duty to compensate PLAINTIFF and  
7 other Aggrieved Employees for all hours worked, and that DEFENDANTS had the  
8 financial ability to pay such compensation but willfully, knowingly, and  
9 intentionally failed to do so, and falsely represented to PLAINTIFF and other  
10 Aggrieved Employees that they were properly denied wages.

11 37. At all times herein set forth, PAGA provides that any provision of law under  
12 the Labor Code and applicable IWC Wage Order that provides for a civil penalty  
13 to be assessed and collected by the LWDA for violations of the California Labor  
14 Code and applicable IWC Wage Order may, as an alternative, be recovered by an  
15 aggrieved employee in a civil action brought on behalf of herself and other current  
16 or former employees pursuant to procedures outlined in California Labor Code  
17 section 2699.3.

18 38. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any  
19 person who was employed by the alleged violator and against whom one or more  
20 of the alleged violations was committed."

21 39. PLAINTIFF and other current and former employees of DEFENDANTS are  
22 "aggrieved employees" as defined by Labor Code section 2699(c) in that they are  
23 all DEFENDANTS' current or former employees and one or more of the alleged  
24 violations were committed against them.

25 40. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees,  
26 including PLAINTIFF, may pursue a civil action arising under PAGA after the  
27 following requirements have been met:  
28

(a) The aggrieved employee shall give written notice by certified mail (hereinafter "PAGA Notice") to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

41. On June 7, 2020, PLAINTIFF provided notice to the LWDA and DEFENDANTS of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code § 2699. **Exhibit A**

42. As of the filing date of this amended complaint, over 65 calendar days have passed since PLAINTIFF sent the LWDA Notice described above, and the LWDA has not responded that it intends to investigate PLAINTIFF's claims. Thus, PLAINTIFF has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties and unpaid wages against DEFENDANTS, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198.

43. Labor Code section 558(a) provides "[a]ny 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: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each

1 pay period for which the employee was underpaid in addition to an amount  
2 sufficient to recover underpaid wages. (2) For each subsequent violation, one  
3 hundred dollars (\$100) for each underpaid employee for each pay period for which  
4 the employee was underpaid in addition to an amount sufficient to recover  
5 underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the  
6 affected employee." Labor Code section 558(c) provides "[t]he civil penalties  
7 provided for in this section are in addition to any other civil or criminal penalty  
8 provided by law."

9 44. DEFENDANTS, at all times relevant to this Complaint, were employers or  
10 persons acting on behalf of an employer(s) who violated PLAINTIFF and other  
11 Aggrieved Employees' rights by violating various sections of the California Labor  
12 Code as set forth above.

13 45. As set forth below, DEFENDANTS have violated numerous provisions of both  
14 the Labor Code sections regulating hours and days of work as well as the  
15 applicable IWC Wage Order.

16 46. PLAINTIFF and other Aggrieved Employees were current or former  
17 employees of DEFENDANTS, who

- 18 a. Were not provided full 30 minutes, uninterrupted, off-duty meal periods;  
19 b. Were not provided rest periods;  
20 c. Were not paid overtime;  
21 d. Were not paid minimum wages for all hours worked;  
22 e. Were not paid all compensation owed to her at the time of  
23 termination/resignation/discharge;  
24 f. Were not provided accurate wage statements;

25 46. DEFENDANTS operate a trucking company in California and were:

- 26 a. The current and/or former employer of the PLAINTIFF and other Aggrieved  
27 Employees;  
28 b. Failed to provide full 30 minutes, uninterrupted, off-duty meal periods;  
c. Failed to provide rest periods;  
d. Failed to pay overtime;

- e. Failed to pay minimum wages;
- f. Failed to pay all compensation owed to employees at the time of termination;
- g. Failed to provide accurate wage statements;

47. DEFENDANTS had a policy of requiring PLAINTIFF and other Aggrieved Employees to work without properly recording all hours worked.

48. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, 2699.5, 558, 558.1, PLAINTIFF, acting in the public interest as private attorney general, seek assessment and collection of unpaid wages and civil penalties for themselves, all other Aggrieved Employees, and the State of California against DEFENDANTS, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1 and 1198.

### **DEFENDANTS Systematically Failed to Provide Meal Breaks**

49. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF and other Aggrieved Employees were not provided with timely, uninterrupted, 30-minute meal periods before the end of the fifth hour of work. DEFENDANTS intentionally and systematically enforced policies under which PLAINTIFF and other Aggrieved Employees regularly worked more than five hours per day without being allowed one uninterrupted, timely and full meal period of at least 30 minutes during which the worker was relieved of all of his or her respective job duties.

50. At all relevant times, PLAINTIFF and other Aggrieved Employees frequently were subject to policies and practices that required them to forego their meal periods, due to the excessive and time sensitive amount of work that PLAINTIFFS and other Aggrieved Employees were required to perform for DEFENDANTS. PLAINTIFF and other Aggrieved Employees were required to forego their meal

1 periods because they had to, among other things, finish projects or other  
2 assignments on a timely basis.

3 51. DEFENDANTS also failed to pay PLAINTIFF and other Aggrieved  
4 Employees additional hour of pay for each workday that the meal periods were not  
5 properly provided.

6 52. DEFENDANTS' failure to provide meal periods, and/or to pay PLAINTIFF  
7 and other Aggrieved Employees the statutory premium for missed, delayed and/or  
8 shortened meal periods, systematically violated the mandatory requirements  
9 of sections 226.7, 512, 558, and 1198 of the California Labor Code and Industrial  
10 Welfare Commission Wage Order No. 5-2001, Title 8 California Code of  
11 Regulations section 11050.

12  
13 **DEFENDANTS Systematically Failed to Provide Rest Periods**

14 53. DEFENDANTS intentionally and systematically enforced policies under which  
15 PLAINTIFF and other Aggrieved Employees regularly worked more than four  
16 hours per day without being allowed one or more timely, full and paid rest periods  
17 of at least ten (10) minutes during which the worker was relieved of all of his or  
18 her respective job duties.

19 54. Throughout the relevant period, PLAINTIFF and other Aggrieved Employees  
20 were also subject to policies and practices that required them to forego their rest  
21 periods, due to the excessive and time sensitive amount of work that PLAINTIFF  
22 and other Aggrieved Employees were required to perform for DEFENDANTS.  
23 PLAINTIFF and other Aggrieved Employees, on numerous occasions were  
24 required to forego their rest periods because they had to, and among other things,  
25 finish projects to assignments on a timely basis.

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1 55. PLAINTIFF and other Aggrieved Employees were not provided with  
2 additional hours of pay for each workday that the rest periods were not properly  
3 provided.

4 56. DEFENDANTS' failure to pay PLAINTIFF and other Aggrieved Employees  
5 for working through rest periods systematically violated the mandatory  
6 requirements of sections 226.7, 558 and 1198 of the California Labor Code and  
7 Industrial Welfare Commission Wage Order No. 5-2001, codified as Title 8 section  
8 11050 of the California Code of Regulations.

9  
10 **DEFENDANTS Failed to Pay Overtime**

11 57. In order to complete the excessive amount of work, much of which was time-  
12 sensitive, PLAINTIFF and other Aggrieved Employees were required to work  
13 more than 8 hours a day and/or more than 40 hours per week without being paid  
14 appropriate overtime pay.

15 58. DEFENDANT required PLAINTIFF and other Aggrieved Employees to work  
16 overtime in excess of 8 hours per day and 40 hours per week.

17  
18 **DEFENDANTS Failed to Pay All Hours Worked**

19  
20 59. DEFENDANTS also systematically and constantly failed to pay PLAINTIFF  
21 and other Aggrieved Employees for all hours worked.

22 60. PLAINTIFFS and other Aggrieved Employees, are entitled to earned but  
23 unpaid minimum wages and overtime on account of the services they performed  
24 for DEFENDANTS, when they worked through their meal periods, worked  
25 through rest periods, worked after clocking out, and worked outside of regular  
26 business hours.

27 61. PLAINTIFF and other Aggrieved Employees, are entitled to restitution of  
28 earned but unpaid minimum wages, liquidated damages, prejudgment interest, any

1 applicable Section 203 penalties and civil penalties. Labor Code Sections 218.6,  
2 1194, 1194.2, 1197.1, 1198, 2698 et seq. and IWC Wage Order No.5.

3  
4 **Defendant Failed to Pay Minimum Wages**

5 62. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees for  
6 all time that PLAINTIFF and other Aggrieved Employees were suffered or  
7 permitted to work for DEFENDANTS.

8 63. PLAINTIFF and other Aggrieved Employees performed work for  
9 DEFENDANTS and did not receive appropriate compensation.

10 64. As such PLAINTIFF and other Aggrieved Employees are entitled to earned but  
11 unpaid minimum wages and penalties. Labor Code Sections 218.6, 1194, 1194.2,  
12 1197.1, 1198, 2698 et seq. and IWC Wage Order No.5.

13  
14 **DEFENDANTS Failed to Timely Pay All Wages Upon Separation of**  
15 **Employment**

16 65. Since DEFENDANTS failed to pay PLAINTIFF, and other Aggrieved  
17 Employees, among other things, premium wage for missed meal periods, premium  
18 wage for missed rest periods, minimum wage for all hours worked and  
19 proper overtime compensation, DEFENDANTS willfully failed to pay wages  
20 promptly upon their termination or resignation.

21 66. Because PLAINTIFF and other Aggrieved Employees, who were separated  
22 from their employment did not receive premium wage for missed meal periods,  
23 premium wage for missed rest periods, minimum wage for off-the-clock work and  
24 proper overtime pay, they were not paid all their wages at the time of their  
25 separation from employment. Because DEFENDANTS willfully failed to pay  
26 wages earned on account of their work, PLAINTIFF and other Aggrieved  
27  
28

1 Employees, are entitled to the statutory maximum of thirty days of continuing  
2 wages under Labor Code section 203.

3  
4 **DEFENDANTS Failed to Provide Accurate Wage Statements**

5 67. In light of DEFENDANTS' failure to pay premium wages for missed meal  
6 periods, premium wages for missed rest periods, minimum wages for all hour  
7 worked and proper overtime, they therefore failed to provide accurate wage  
8 statements to PLAINTIFF and other Aggrieved Employees, that properly,  
9 identified all gross wages earned, net wages earned, and all applicable hourly rates  
10 in effect during the pay period and the corresponding number of hours worked at  
11 each hourly rate.

12 **FIRST CAUSE OF ACTION**

13 **Failure to Provide Meal Periods in violation of Cal. Lab. Code § 226.7, 512,**  
14 **IWC Wage Order No.5**

15 (By PLAINTIFF against all DEFENDANTS)

16 68. PLAINTIFF incorporates the foregoing paragraphs by reference, as though said  
17 paragraphs were set forth herein.

18 69. Cal. Lab. Code §§ 226.7 and 512 provide that no employer shall employ any  
19 person for a work period of more than five (5) hours without providing a meal  
20 period of not less than 30 minutes.

21 70. Cal. Lab. Code § 226.7 provides that if an employer fails to provide an  
22 employee a meal period in accordance with this  
23 section, the employer shall pay the employee one (1) hour of pay at the employee's  
24 regular rate of compensation for each five (5) hours of work that the meal period is  
25 not provided.

26 71. DEFENDANTS have intentionally and improperly denied meal periods to  
27 PLAINTIFF and other Aggrieved Employees, in violation of Cal. Lab. Code §§  
28

226.7 and 512. 49. At all relevant times, PLAINTIFF and other Aggrieved Employees worked more than five hours in a workday. At all relevant times, DEFENDANTS failed to provide meal periods as required by Cal. Lab. Code §§ 226.7 and 512, and also failed to compensate PLAINTIFF and other Aggrieved Employees with the required premium payments.

72. Cal. Lab. Code § 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that meal period is not provided.

73. By virtue of DEFENDANTS' unlawful failure to provide meal periods to PLAINTIFF and other Aggrieved Employees, they have suffered, and will continue to suffer, damages in the amounts which are presently unknown to them, but which will be ascertained according to proof at trial.

74. On information and belief, DEFENDANTS knew, or should have known, that PLAINTIFF and other Aggrieved Employees, were entitled to meal periods but purposely elected not to provide these mandated periods.

75. PLAINTIFF and other Aggrieved Employees are entitled to seek and recover civil penalties, reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 226.7, 512, 1194, 2698 *et seq.*

**SECOND CAUSE OF ACTION**  
**FAILURE TO PROVIDE REST PERIODS**  
(Cal. Lab. Code § 226.7)  
(By PLAINTIFF against all DEFENDANTS)

75. PLAINTIFF incorporates the foregoing paragraphs by reference, as though said paragraphs were set forth herein.

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1 76. Cal. Lab. Code § 226.7 provides that employers shall authorize and permit  
2 employees to take rest periods at the rate of ten (10) minutes net rest time per four  
3 (4) hours of work, or major fraction thereof.

4 77. Cal. Lab. Code § 226.7 provides that if an employer fails to provide an  
5 employee rest periods in accordance with this section, the employer shall pay the  
6 employee one (1) hour of pay at the employee's regular rate of compensation for  
7 each workday that the rest period is not provided.

8 78. DEFENDANTS have intentionally and improperly denied and failed to provide  
9 rest periods to PLAINTIFF and other Aggrieved Employees in violation of Cal.  
10 Lab. Code §§ 226.7 and 512.

11 79. At all relevant times, PLAINTIFF and other Aggrieved Employees worked  
12 more than four hours in a workday, or more than a major fraction of 4 hours, and  
13 DEFENDANTS failed to provide rest periods as required by Cal. Lab. Code §§  
14 226.7 and 512.

15 80. By virtue of DEFENDANTS' unlawful failure to provide rest periods to  
16 PLAINTIFF and other Aggrieved Employees, they have suffered, and will  
17 continue to suffer, damages in the amounts which are presently unknown to them,  
18 but which will be ascertained according to proof at trial.

19 81. On information and belief, DEFENDANTS knew, or should have known, that  
20 PLAINTIFF and other Aggrieved Employees were entitled to rest periods but  
21 purposely elected not to provide these mandated periods.

22 82. PLAINTIFF and other Aggrieved Employees were entitled to seek and recover  
23 civil penalties, reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§  
24 226.7, 512, 1194, 2698 *et seq.*

25 //////////////////////////////////

26 //////////////////////////////////

27 //////////////////////////////////

28

**THIRD CAUSE OF ACTION**  
**FAILURE TO PAY OVERTIME COMPENSATION**  
[Cal. Lab. Code § 510, 1194, and 1198]  
(By PLAINTIFF against all DEFENDANTS)

83. PLAINTIFF incorporates the foregoing paragraphs by reference, as though said paragraphs were set forth herein.

84. Cal. Lab. Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

85. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid overtime compensation, interest thereon, together with the costs of suit, and attorney's fees. Cal. Lab. Code § 1198 states that the employment of an employee for longer hours than those fixed by Industrial Welfare Commission is unlawful.

86. DEFENDANTS, intentionally and improperly failed to pay PLAINTIFF and other Aggrieved Employees overtime pay and/ or did not properly pay PLAINTIFF and other Aggrieved Employees overtime wages in violation of the Cal. Lab. Code and Industrial Welfare Commission requirements.

87. PLAINTIFF and other Aggrieved Employees regularly worked more than eight (8) hours a day and/or more than forty (40) hours per week and DEFENDANTS willfully failed to pay PLAINTIFF and other Aggrieved Employees, overtime compensation for such overtime hours.

88. PLAINTIFF and other Aggrieved Employees request recovery of overtime compensation according to proof, interest, attorney's fees and cost pursuant to Cal. Lab. Code §§ 218.5 and 1194(a), as well as the assessment of any statutory damages and penalties against DEFENDANT in a sum as provided by the Cal. Lab. Code and/or other relevant statutes.

89. Further PLAINTIFF other Aggrieved Employees are entitled to seek and recover reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 218.5, 1194, 2698 *et seq.*

**FOURTH CAUSE OF ACTION FAILURE TO PAY MINIMUM WAGES**  
**[Cal. Lab. Code § 1182.12, 1194, 1194.2, 1197.1)**  
(By PLAINTIFF against all DEFENDANTS)

90. PLAINTIFF incorporates the foregoing paragraphs by reference, as though said paragraphs were set forth herein.

91. Pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197 it is unlawful for a California employer to suffer or permit an employee to work without paying wages for all hours worked, as required by the applicable Industrial Welfare Commission ("IWC") Wage Order.

92. During all times relevant, IWC Wage Order No. 5-2001, governing the transportation industry, applied to PLAINTIFF other Aggrieved Employees' employment with DEFENDANTS.

93. Pursuant to Wage Order 5, section 2(K), "Hours Worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

94. IWC Wage Order No. 5-2001, § 4(A), requires every employer to pay each employee minimum wages.

95. During all relevant times, PLAINTIFF and other Aggrieved Employees were not paid minimum wages for all hours suffered or permitted to work, including time worked off the clock, in violation of the minimum wage provisions of California Labor Code §§ 1182.12, 1194, 1194.2, and 1197, and IWC Wage Order No. 5-2001, § 4(A).

1 96. Labor Code § 1194.2, subdivision (a) provides that, in an action to recover  
2 wages because of the payment of a wage less than the minimum wage fixed by  
3 IWC Wage Orders, an employee is entitled to recover liquidated damages in an  
4 amount equal to the wages unlawfully unpaid and interest thereon.

5 97. PLAINTIFF and other Aggrieved Employees should have received minimum  
6 wages in a sum that will be determined according to proof at trial.

7 98. DEFENDANTS intentionally failed, and refused, and continue to fail and  
8 refuse, to pay PLAINTIFF other Aggrieved Employees minimum wages for all  
9 time suffered or permitted to work including time worked off the clock.

10 99. PLAINTIFF and other Aggrieved Employees request the recovery of the  
11 unpaid minimum wage, waiting time penalties, liquidated damages, interest,  
12 attorneys' fees, costs and civil penalties, in an amount to be determined at trial.

13 **FIFTH CAUSE OF ACTION**  
14 **FAILURE TO PAY ALL WAGES DUE AT TIME OF SEPARATION OF**  
15 **EMPLOYMENT**

16 [Cal. Lab. Code § 201, 202, 203, 208]  
17 (By PLAINTIFF against all DEFENDANTS)

18 100. PLAINTIFF incorporates the foregoing paragraphs by reference, as though  
19 said paragraphs were set forth herein.

20 101. When PLAINTIFF and other Aggrieved Employees separated his or her  
21 employment with DEFENDANT by way of termination, resignation or layoff,  
22 DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees for all  
23 compensation due and owing including, but not limited  
24 to, overtime compensation, minimum wages owed, vacation pay, bonus pay,  
25 commission pay, and premium pay for missed meal and rest periods.

26 102. In addition, DEFENDANTS failed to pay PLAINTIFF and other Aggrieved  
27 Employees the 30-day waiting period penalty for not providing PLAINTIFF and  
28

1 other Aggrieved Employees with all compensation due and owing at time the  
2 employment relationship terminated.

3 103. Because DEFENDANTS willfully failed to pay wages earned by PLAINTIFF  
4 and other Aggrieved Employees at the time of separation of employment, they are  
5 entitled to the statutory maximum of thirty days of continuing wages under Labor  
6 Code Section 203.

7 104. PLAINTIFF and other Aggrieved Employees are entitled to seek and recover  
8 reasonable attorneys' fees, costs and civil penalties pursuant to Cal. Lab. Code §§  
9 218.5, 226.7, 1194, 2698 *et seq.*

10 **SIXTH CAUSE OF ACTION**  
11 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**  
12 [Cal. Lab. Code § 226 *et. seq.*]  
13 (By PLAINTIFF against all DEFENDANTS)

14 105. PLAINTIFF incorporates the foregoing paragraphs by reference, as though  
15 said paragraphs were set forth herein

16 106. DEFENDANTS' failure to provide accurate itemized statements to which  
17 PLAINTIFF and other Aggrieved Employees were entitled, was a violation  
18 of California Labor Code Section 226.

19 107. For instance, DEFENDANTS failed to, among other things: pay minimum  
20 wages, pay overtime, allow PLAINTIFF and other Aggrieved Employees to record  
21 off the clock work, pay premium wages for meal and rest periods they failed to  
22 provide. As a result, the wage statements DEFENDANT provided to PLAINTIFF  
23 and other Aggrieved Employees were facially deficient and grossly inaccurate.

24 108. DEFENDANTS, and each of their, failure to provide accurate itemized  
25 statements was willful, and caused injuries to PLAINTIFF and other Aggrieved  
26 Employees entitling PLAINTIFF and other Aggrieved Employees to penalties  
27 under Labor Code Section 226.  
28

1 109. PLAINTIFF is entitled to seek and recover reasonable attorneys' fees, costs  
2 and civil penalties pursuant to Cal. Lab. Code §§ 218.5, 226.7, 1194, 2698 *et seq.*

3 **SEVENTH CAUSE OF ACTION**  
4 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**  
5 (By PLAINTIFF against all DEFENDANTS)

6 110. PLAINTIFF incorporates the foregoing paragraphs by reference, as though  
7 said paragraphs were fully set forth herein.

8 101. “Wrongful termination from employment is tortious when the termination  
9 occurs in violation of a fundamental public policy.” *Gantt v. Sentry*  
10 *Insurance* (1992) 1 Cal.4th 1083, 1090, 4 Cal.Rptr.2d 874, 824 P.2d 680. A  
11 policy is “fundamental” when it is “carefully tethered” to a policy “delineated in  
12 constitutional or statutory provisions” *id.* at 1095, involves a duty affecting the  
13 public at large, rather than one owed to or imposed solely upon the parties to a  
14 dispute *id.* at 1090, and is “well established” and “sufficiently clear” to the  
15 employer at the time of the discharge. *Id.* Wrongful termination typically arises  
16 when an employer retaliates against an employee for refusing to violate a statute,  
17 performing a statutory obligation, exercising a statutory right, or reporting an  
18 alleged violation of a statute of public importance. *Turner v. Anheuser-Busch,*  
19 *Inc.* (1994) 7 Cal.4th 1238, 1256, 32 Cal.Rptr.2d 223, 876 P.2d 1022. (Italics  
20 added)

21 102. PLAINTIFF was wrongfully terminated because for her refusing to violate a  
22 statute, performing a statutory obligation, exercising a statutory right, or reporting  
23 an alleged violation of a statute of public importance. *Turner v. Anheuser-Busch,*  
24 *Inc.* (1994) 7 Cal.4th 1238, 1256.

25 103. PLAINTIFF suffered specific and general damages as a result of being  
26 wrongfully terminated by DEFENDANTS.  
27  
28

1 104. PLAINTIFF is entitled to seek and recover back pay, front pay, lost benefits,  
2 reinstatement and damages for emotional distress.

3 **PRAYER FOR RELIEF**  
4

5 WHEREFORE, PLAINTIFFS pray for relief and judgment against  
6 DEFENDANTS as follows:

7 **ON THE FIRST CAUSE OF ACTION**

- 8 1. One hour of pay for each five (5) hours of work in which a meal period was not  
9 provided;  
10 2. For pre-judgment interest;  
11 3. For statutory damages in an amount according to proof. Such statutory damages  
12 will include, but are not necessarily limited to, damages based on compensation  
13 that should have been paid to PLAINTIFFS; and  
14 4. For reasonable attorney's fees and costs of suit herein, including fees and costs  
15 pursuant to California statutes, including but not limited to, the California Labor  
16 Code section 558, 1194, and 1198 thereof.  
17 5. For civil penalties pursuant to the California Labor Code sections 2698 *et seq.*

18 **ON THE SECOND CAUSE OF ACTION**

- 19 1. One hour of pay for each workday in which a rest period was not provided for  
20 each four (4) hours of work, or major fraction thereof;  
21 2. For pre-judgment interest;  
22 3. For statutory damages in an amount according to proof. Such statutory damages  
23 will include, but are not necessarily limited to, damages based on compensation  
24 that should have been paid to PLAINTIFFS; and  
25 4. For reasonable attorney's fees and costs of suit herein, including fees and costs  
26 pursuant to California statutes, including but not limited to, the California Labor  
27 Code and section 558, 1194 and 1198 thereof.  
28

5. For civil penalties pursuant to the California Labor Code sections 2698 *et seq.*

**ON THE THIRD CAUSE OF ACTION**

1. For a declaration that the business practices alleged herein are a violation of the public policy of the State of California, including but not limited to, California Labor Code sections 510, 558, 1194, and 1198;

2. For compensatory damages, including lost wages, commissions, bonuses and other losses, according to proof;

3. For general damages, according to proof;

4. For an award of interest, including prejudgment interest at the legal rate;

5. For statutory damages in an amount according to proof. Such statutory damages will include, but are not necessarily limited to, damages based on compensation that should have been paid to PLAINTIFF; and

6. For reasonable attorney's fees and costs of suit herein, including fees and costs pursuant to California statutes, including but not limited to, the California Labor Code and section 558, 1194, and 1198 thereof.

7. For civil penalties pursuant to the California Labor Code sections 2698 *et seq.*

**ON THE FOURTH CAUSE OF ACTION**

1. For a declaration that the business practices alleged herein are a violation of the public policy of the State of California, including but not limited to, California Labor Code sections 558, 1182.12, 1194, 1194.2, 1197 and, 1198;

2. For general and compensatory damages according to proof, including all actual, consequential, and incidental losses, including, but not limited to, loss of income, together with prejudgment interest;

3. For statutory damages in an amount according to proof. Such statutory damages will include, but are not necessarily limited to, damages based on compensation that should have been paid to PLAINTIFF;

4. For pre-judgment interest; and

5. For reasonable attorney's fees and costs of suit herein, including fees and costs pursuant to California statutes, including but not limited to, the California Labor Code and section 558, 1194, and 1198 thereof.

6. For civil penalties pursuant to the California Labor Code sections 2698 *et seq.*

**ON THE FIFTH CAUSE OF ACTION**

1. For a declaration that the business practices alleged herein are a violation of the public policy of the State of California, including but not limited to, California Labor Code sections 201, 202, 203, and 208;

2. For general and compensatory damages according to proof, including all actual, consequential, and incidental losses, including, but not limited to, loss of income, together with prejudgment interest;

3. For statutory damages in an amount according to proof. Such statutory damages will include, but are not necessarily limited to, damages based on compensation that should have been paid to PLAINTIFF such as, the statutory waiting time penalty, and wages as defined by California Labor Code section 200;

4. For pre-judgment interest; and

5. For reasonable attorney's fees and costs of suit herein, including fees and costs pursuant to California statutes, including but not limited to, the California Labor Code and section 558, 1194, and 1198 thereof.

6. For civil penalties pursuant to the California Labor Code sections 2698 *et seq.*

**ON THE SIXTH CAUSE OF ACTION**

1. For a declaration that the business practices alleged herein are a violation of the public policy of the State of California, including but not limited to, California Labor Code section 226 and 1174.5;

2. For general and compensatory damages according to proof, including all actual, consequential, and incidental losses, including, but not limited to, loss of income, together with prejudgment interest;

3. For statutory damages in an amount according to proof. Such statutory damages will include, but are not necessarily limited to, damages based on compensation that should have been paid to PLAINTIFF;
4. For pre-judgment interest; and
5. For reasonable attorney's fees and costs of suit herein, including fees and costs pursuant to California statutes, including but not limited to, the California Labor Code and section 558, 1194, and 1198 thereof.
6. For civil penalties pursuant to the California Labor Code sections 2698 *et seq.*

**ON THE SEVENTH CAUSE OF ACTION**

1. For specific and general damages;
2. For pre-judgment interest;
3. For injunctive relief ordering PLAINTIFF be reinstated and restored her position and benefits wrongfully deprived from her.

DATED: October 5, 2020

By:   
Attorney for PLAINTIFF Nancy Ponzio,  
individually and as aggrieved employee pursuant  
to the Private Attorney General Act ("PAGA")

# EXHIBIT A

# CDLP LAW

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June 8, 2020

FILE NO.910-cv20-3

**Via Online Filing:**

<https://dir.tfafonns.net/198>

Labor and Workforce Development Agency

Attn. PAGA Administrator

1515 Clay Street, Ste. 801

Oakland, California 94612

## **NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3**

**Re: LWDA Case No. LWDA-CM-792615-20**

Wage/Hour Claims of Nancy Ponzio ("Employee" or "Plaintiff") against Montclair Royale Senior Living, Inc., a California Corporation; Jimmy Tang, in his official capacity as Montclair Royale Senior Living, Inc.'s owner, controlling shareholder and officer; ("Employers" or "Defendants")

**To:** PAGA Administrator, California Labor and Workforce Development Agency ("LWDA")

**From:** Nancy Ponzio who was subjected to the wage and hour practices set forth below

The Employee submit this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3 subdivisions (a) and (f), and allege as follows:

Nancy Ponzio ("Employee") is a resident of Fontana, California and a former employee of Employers. Until terminated in or about November 2019, Employee worked as a non-exempt cook at Employers' Montclair, California location. Employee was paid at an hourly rate of \$12.00.

Employee was terminated from his job on or about November, 2019. Employee did not receive a final paycheck that paid all wages owed to her as required by Labor Code Sections 201 and 202.

Employers also employ certified nurse assistants ("CNA"), licensed practical nurses ("LVN"), maintenance workers at its Montclair, California location. From in or about October 2016 through the present (the "Relevant Period"), the Employers utilized consistent policies and procedures regarding Employee and other similarly aggrieved employees, in violation of Labor Code sections 201-203, 204, 210, 216, 218.5, 218.6, 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 280 and Wage Order Regulating Wages, Hours, and Working Conditions in the Public Housekeeping Industry, California Code Regulations., tit. 8, § 11050 ("Wage Order No. 5"). The following is a summary of the violations.

**I. Failure to Pay All Hours Worked/Off-The-Clock Work/Minimum Wages In Violation Of California Labor Code Sections 221, 223, 224, 1197, 1197.1, 1194, 1198 and Cal. Code Regs., tit. 8, § 11050.**

Wage Order No. 5–2001, subdivision 4(B) provides as follows: “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” *Cal.Code Regs., tit. 8, § 11090, subd. (4)(B)*. “Hours worked” is defined in subdivision 2(K) of the wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” *Cal.Code Regs., tit. 8, § 11090, subd. (2)(K)*. Violation of an applicable wage order is also a violation of Labor Code 1198, and Section 2699, subdivision (f) provides for a default civil penalty to violations of Section 1198. *Bright v. 99¢ Only Stores*, 118 Cal.Rptr.3d 723, 729, 189 Cal.App.4th 1472, 1481 (Cal.App. 2 Dist.,2010) (“Nowhere in the Labor Code is a civil penalty specifically provided for violations of [] section 1198. Thus, section 2699, subdivision (f), by its terms, allows for a civil penalty for violations of section 1198 . . .”)

During the Relevant Period, the Employers have had a consistent policy and practice of misclassifying all of its non-exempt employees as exempt and failed to pay the non-exempt employees all hours worked. For instance, the Montclair nursing center where Employee worked had no mechanism to allow the employees to accurately track their hours: the punch machine was constantly not working and all employees were required to manually log-in the clock-in and clock-out times in a paper pad.

The Employers also had a practice and policy of discouraging the employees to accurately report their hours worked, and the hours manually logged in by the employees constantly under-report the actual hours the employees were suffered or permitted to work.

For instance, the employees were often told to report the start time as they were “supposed” to begin to work, *i.e.*, the beginning time they were given in advance in a schedule, and regardless an employee may have showed up at work earlier than the scheduled starting time and was allowed to start work earlier. By way of example, if Ms. Ponzi started to work on 5:30 a.m., she must report starting time as 6:00 a.m. if 6:00 a.m. was the starting time she was given in her work schedule for that week. By discouraging the employees to accurately report and capture all hours they were permitted or suffered to work, the Employers have violated the California Labor Code Sections 1197, 1197.1, 1194, 1198 and Cal. Code Regs., tit. 8, § 11050.

Due to Employers’ knowing and willful violation of the pertinent labor code sections, Ms. Ponzio and other aggrieved employees are entitled to recover statutory damages and to Collect civil penalties under PAGA.

**II. Failure to Pay Overtime Premiums.**

Under section 510(a) and 1198 of the California Labor Code, and Wage Order No. 5, non-exempt employees are to be paid 1.5 times their regular rate of pay for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek and 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours per workday. Regular

rate of pay includes all remuneration for employment paid to or on behalf of the employee including commissions and non-discretionary bonuses.

Because the Employers purposefully failed to maintain a system to allow the employees to accurately report and capture all hours they were permitted or suffered to work, they evaded their obligation to pay overtime hours worked by the employees.

Ms. Ponzio and other aggrieved employees are entitled to recover those unpaid premium overtime wages, as well as civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

### **III. Failure to Provide Timely, Uninterrupted, Off-Duty Meal Periods In Violation Of Labor Code §§ 226.7, 512, 1198, and Wage Order No. 9.**

During the Relevant Period, the Employers failed to provide Ms. Ponzio and other aggrieved employees with timely and off-duty meal periods of at least 30 minutes, in violation of California law. Pressure of business, work load and short-staffing prevented Ms. Ponzio from being relieved and they had to keep working through their meal break time. A lot of times, Ms. Ponzio was not allowed to take a full, 30-minutes uninterrupted meal break. Ms. Ponzio and other aggrieved employees were not paid meal period premiums for each day an uninterrupted meal break was not provided.

Ms. Ponzio and other aggrieved employees are entitled to recover those unpaid premium wages, as well as civil penalties, and interest thereon, pursuant to Labor Code sections §§ 226.7, 512, 1198.

### **IV. Failure to Provide Timely, Uninterrupted, Off-Duty Rest Periods In Violation Of Labor Code §§ 226.7, 512, 1198, and Wage Order No. 9.**

Applicable IWC Wage Order requires employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes for every four (4) hours of work, or major fraction thereof. The Wage Order, Labor Code section 226.7 and Regulations also state if an employer fails to provide an employee with rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the rest period was not provided. These remedies are codified under California Labor Code section 226.7.

During the Relevant Period, the Employers failed to provide Ms. Ponzio and other aggrieved employees with timely and off-duty rest breaks of at least 10 minutes per every four hours worked. Pressure of business, work load and short-staffing prevented Plaintiffs from being relieved and they had to keep working through their meal break time. A lot of times, Ms. Ponzio was simply not permitted to take a full, 10-minutes uninterrupted rest break. The Employers policies and practices regarding work conditions and expectations for its non-exempt employees caused Ms. Ponzio and other aggrieved employees to miss one or more rest breaks, and/or receive late or short rest breaks. Thus, the Employers did not relieve Ms. Ponzio or other aggrieved employees from their duties. They were not paid rest break premiums for each workday that the rest break was not provided.

Ms. Ponzio and other aggrieved employees were not paid rest break premiums for each day an uninterrupted rest break was not provided and are entitled to recover those unpaid premium wages, as well as civil penalties, and interest thereon, pursuant to Labor Code sections §§ 226.7, 512, 1198.

#### **V. Failure to Reimburse Necessary Business Expenses In Violation of Labor Code § 2802.**

Labor Code Section 2802, subdivision(a) provides that “[a]n employer shall indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

During the Relevant Period, the Employers have consistently failed to reimburse reasonable business expenses necessarily incurred by the aggrieved employees in performance of their duties, in violation of Labor Code section 2802.

Ms. Ponzio and other aggrieved employees are entitled to recover those unpaid business expenses, attorney’s fees and costs as well as civil penalties, and interest thereon, pursuant to Labor Code § 2802.

#### **VI. Failure to Pay All Wages Due Upon Separation Of Employment In Violation of Labor Code Section Lab. Code, §§ 201, 202, 203, 204, 216, 218.5, 227.3, 1194.**

California Labor Code Section 201 requires “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code Section 202 provides that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.” California Labor Code Section 201 provides “[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

During the Relevant Period, Employers failed to pay Plaintiffs and other aggrieved employees all wages due to them within the time period specified by section 204- specifically, meal and rest break premium wages and overtime wages.

An employer that does not pay its employees the wage required by law when they quit or are fired is liable for both the underpayment of wages and, if the failure to pay is “willful,” a “waiting time” penalty of up to 30 days' wages. *Diaz v. Grill Concepts Services, Inc.*, 233 Cal.Rptr.3d 524, 527, 23 Cal.App.5th 859, 863 (Cal.App. 2 Dist., 2018); Lab. Code, §§ 203, subd. (a), 1194, subd. (a).

Because Ms. Ponzio was not paid for all hours worked, overtime premiums and meal and rest break premium wages owed to him, he was not paid *all* wages due to her at the termination of her employment. Therefore, Ms. Ponzio and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

## **VII. Failure to Furnish Accurate And Compliant Itemized Wage Statements In Violation of Labor Code §§ 226, 226.3, 226.7, 512.**

California Labor Code section 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, "gross wages earned," (§226(a)(1)), "net wages earned" (§226(a)(5)), "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee ..." §226(a)(9)) and "the inclusive dates of the period for which the employee is paid." §226(a)(6). Labor Code Section 226(e) provides if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs, and \$100 per employee for each violation in any subsequent pay period, not to exceed \$4,000 per employee. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the Relevant Period, Employers knowingly and intentionally failed to provide Ms. Ponzio and other aggrieved employees with complete and accurate wage statements as required by California Labor Code Section 226. In response to Ms. Ponzio's demand for production of her wage statements, the completely ignored the demands.

Because the Employers utterly failed to furnish Ms. Ponzio and other aggrieved employees with complete and accurate wage statements as required by California Labor Code Section 226, they are entitled to collect statutory damages as well as civil penalties under California Labor Code Section 226.

## **VIII. Failure to Maintain Copy of Accurate Itemized Wage Statements In Violation of Labor Code §§ 226.7, 512.**

Since the Employers failed to accurately track, calculate and pay Ms. Ponzio and other aggrieved employees for all hours worked, overtime premiums and meal and rest break premiums owed to them. Ms. Ponzio and other aggrieved employees' wage statements necessarily incorrectly stated their gross and net wages. As a result, Ms. Ponzio and other aggrieved employees were provided with incompliant statements that failed to comport with California Labor Code section 226 and the Employer failed to maintain copy of accurate itemized wage statements.

Ms. Ponzio and other aggrieved employees are entitled to collect civil penalties under Labor Code §§ 226.7, 512, 2699.

## **IX. Failure To Keep And Retain Employment Records As Required By Law.**

Numerous Labor Code provisions require an employer to keep and retain records pertaining to an employee's employment for certain minimum period of time. For example, Labor Code § 1198.5(c) (requiring an employer to maintain personnel records, defined to include those relating to an employee's performance and grievance concerning the employee for at least three years); Labor Code § 2751 (requiring an employer to maintain the written employment contract if an employee is to be paid by commission); Labor Code § 432 (documents relating to the obtaining or holding of employment); Labor Code § 1197.5 (records of employee wages and wage rates, job classifications and other terms and conditions of employment for at least two years); Labor Code §§ 1024.5, 432.7, 432.8 (Consumer credit reports or criminal background checks or arrest records of applicants or employees); Labor Code §§ 245, 245.5 (employee records of hours worked, number of paid sick days accrued, number of paid sick days used); Labor Code § 6409 (records for injuries causing loss of work time); Labor Code § 6408(d) (accurate records of employee exposures to potentially toxic materials or harmful physical agents)

Since the Employers failed to comply with the record keeping and retention requirement mandated by the Labor Code provisions stated above, Ms. Ponzio and other aggrieved employees are entitled to collect civil penalties under any of the above-stated Labor Code provisions and Labor Code § 2699.

## **X. The Company's Individual Owners, Directors, Managing Agents Are Personally Liable For All Damages And Civil Penalties Under Labor Code Sections 558, 558.1 And Under The Alter Ego Theory.**

Jimmy Tang and DOES 1-50 are natural persons who owned, controlled and managed Montclair Royale Senior Living, Inc. and they separately and jointly caused Montclair Royale Senior Living, Inc. to violated the Labor Code provisions mentioned herein. Jimmy Tang and DOES 1-50 are also the alter ego of Dream Booster Company. *See Turman v. Superior Court of Orange County*, 17 Cal.App.5th 969 (Cal.App. 4 Dist., 2017). They are also joint employers of Ms. Ponzio and other aggrieved employees. *See Martinez v. Combs* (2010) 49 Cal.4th 35, 64, 109 Cal.Rptr.3d 514, 231 P.3d 259. Jimmy Tang and DOES 1-50 are personally liable for all of the Employer's violations.

Under the Private Attorneys General Act of 2004 (PAGA) (Lab. Code, § 2698 et seq.), an employee may seek civil penalties for Labor Code violations committed against her and other aggrieved employees by bringing — on behalf of the state — a representative action against her employer. *ZB, N.A. v. Superior Court of San Diego County*, 2019 WL 4309684, at \*1 (Cal., 2019); § 2699, subd. (a).

Ms. Ponzio and other aggrieved employees are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 218.5, 218.6, and 1194, and penalties pursuant to California Labor Code sections 203, 226.7, and 558 from Employers as well as Jimmy Tang and DOES 1-50.

Ms. Ponzio and other aggrieved employees, seek all penalties or remedies as may be allowed under PAGA, and by this letter give written notice of their PAGA claim pursuant to Labor Code section 2699.3(a/c)(2)(A). Please advise within sixty (60) calendar days of the filing/postmark

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date of

this Notice whether the LWDA intends to investigate the violations alleged above.

We understand that if we do not receive a response within sixty-five (65) calendar days of the filing/postmark date of this Notice that the LWDA intends to investigate these allegations, the aggrieved Employees may immediately thereafter commence a civil action against the Employers pursuant to Labor Code §2699.

Wang is represented in this matter by Jiakun Lei of CDLP Law.

Very truly yours,

Dated: June 8, 2020

CDLP LAW

By: *Jiakun Lei*  
JiaKun Lei, Attorney for Nancy Ponzio

**cc: (via Certified Mail)**

Jimmy Tang  
213 TIGER LN  
PLACENTIA CA 92870