

James R. Hawkins, Esq. SBN 192925
Isandra Fernandez, Esq. SBN 220482
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676

Attorneys for Plaintiff, MARGARET GREEN
on behalf of herself and all others similarly situated

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

MARGARET GREEN on behalf of herself and
all others similarly situated

Plaintiff,

vs.

SPRING VALLEY POST ACUTE LLC, a
California limited liability company and DOES
1 through 50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages**
- 2) Failure to Provide Lawful Meal
Periods or Compensation in Lieu
Thereof**
- 3) Failure to Provide Lawful Rest
Periods or Compensation in Lieu
Thereof**
- 4) Failure to Timely Pay Wages**
- 5) Knowing and Intentional Failure to
Comply With Itemized Employee
Wage Statement Provisions**
- 6) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

Plaintiff MARGARET GREEN on behalf of herself and all others similarly situated
assert claims against Defendant SPRING VALLEY POST ACUTE LLC and DOES 1 through
50, inclusive (hereinafter collectively referred to as "Defendants") as follows:

I.

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought against Defendants (hereinafter “SPRING VALLEY” or “Defendants”) on behalf of Plaintiff MARGARET GREEN (hereinafter “Plaintiff”) and all employees not classified as “Exempt” or primarily employed in executive, professional, or administrative capacities, employed by, or formerly employed by SPRING VALLEY in California. (hereinafter referred to as “Non-Exempt Employees” and/or “Class Members”).

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices, and workload requirements wherein Plaintiff and all other Non Exempt Employees: (1) were not paid proper wages they earned for all hours they worked including proper overtime compensation; (2) were not permitted to take their full statutorily authorized rest and meal periods, or had their rest and meal periods shortened or provided to them late due to the scheduling and work load and time requirements placed upon them by Defendants. Defendants failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the meal period and/or rest period that was not properly provided;

3. During the liability period, Defendants have also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Non Exempt Employees with accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked.

4. During the liability period, Defendants have also failed to pay all wages owed to discharged or resigned Class Members in a timely manner.

5. Plaintiff, on behalf of herself and all Class Members, bring this action pursuant to Labor Code sections 201, 202, 203, 204, 225, 226, 226.7, 510, 512, 1194, 1199, California Code of Regulations, Title 8, section 11040 *et seq.* and any other applicable Industrial Welfare

Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

6. Plaintiff, on behalf of herself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to pay all overtime wages and rest and meal period premiums to each of their Non-Exempt Employees.

II.

VENUE

7. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant conducts substantial and continuous commercial activities in San Bernardino County, California and each Defendant is within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in San Bernardino County, California.

III.

PARTIES

8. Plaintiff is, and at all times mentioned in this complaint was, a resident of California.

9. On information and belief, Defendant SPRING VALLEY is a California corporation which is headquartered in Victorville, California and engaged in providing health care and rehabilitation services throughout California.

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

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

IV.

FACTUAL BACKGROUND

12. Plaintiff was employed by SPRING VALLEY as a licensed vocational nurse on or about April 15, 2018 and occupied said non-exempt, hourly position until the last day of her employment on or about November 9, 2019.

13. During the relevant time period, Defendants failed to pay proper overtime compensation when Plaintiff and Non Exempt Employees worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

14. As Non Exempt Employees, Plaintiff and Class Members were frequently required to work in excess of five (5) hours without a minimum, uninterrupted thirty (30) minute meal period and/or in excess of ten (10) hours without a second minimum 30 minute meal period and not being compensated one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided, in violation of California labor laws, regulations and IWC Wage Order.

15. Due to the time constraints, work load requirements implemented by Defendants and staff shortages at SPRING VALLEY, Plaintiff and Class Members were occasionally required to complete certain job duties “off the clock” and therefore not paid all lawful wages earned including proper overtime compensation and/or minimum wage. For instance, Plaintiff and Class Members were frequently required to work during their scheduled meal breaks despite clocking out for the meal break. After having worked through what should have been an uninterrupted thirty (30) minute meal period, Plaintiff had to clock back in.

16. Despite the work load requirements and time constraints imposed on Plaintiff and Class Members during their shifts, Defendants discouraged overtime work in order not to

1 have to pay employees overtime compensation. As such, Plaintiff and Class Members
2 frequently clocked out at the scheduled end of their work shift and finalized work “off the
3 clock”. Plaintiff estimates that during her employment, several times a month, she spent
4 anywhere from twenty minutes up to one hour working “off the clock” for which she did not
5 receive compensation.

6 17. Due to the work load requirements and time constraints imposed by Defendants,
7 Plaintiff and similarly situated Class Members were frequently required to work without being
8 permitted or authorized a minimum ten (10) minute rest period for every four hours or major
9 fraction thereof. Plaintiff and similarly situated Class Members were unable to take any rest
10 breaks, nor given a third rest break after the tenth hour of their shift. Plaintiff and Class
11 Members were not compensated one (1) hour of pay at their regular rate of compensation for
12 each workday that a rest period was not provided, in violation of California labor laws,
13 regulations, and IWC Wage Orders.

14 18. On information and belief, SPRING VALLEY willfully failed to pay all earned
15 wages in a timely manner to Non Exempt Employees; nor has Defendant paid to Non Exempt
16 Employees, upon or after termination of their employment with Defendant, all compensation
17 due, including but not limited to all wages owed and compensation for having failed to
18 properly provide rest periods and meal periods.

19 19. Defendants have also failed to maintain accurate itemized records reflecting
20 total hours worked and have failed to provide Non Exempt Employees with accurate, itemized
21 wage statements reflecting total hours worked and appropriate rates of pay for those hours
22 worked

23 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 currently employ and during the relevant period have employed over one hundred (100)
25 employees in the State of California in non-exempt hourly positions.

26 21. Non-Exempt Employees employed by SPRING VALLEY, at all times pertinent
27 hereto, have been non-exempt employees within the meaning of the California Labor Code, and
28 the implementing rules and regulations of the IWC California Wage Orders.

V.

CLASS ACTION ALLEGATIONS

22. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are or were employed by Defendants in the state of California as hourly non exempt employees and who within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

23. Plaintiff also seeks to represent Subclasses which are composed of persons satisfying the following definitions:

a. All persons who are or were employed by Defendants in the state of California, as hourly non-exempt employees who, within the liability period, were not accurately and fully paid all lawful wages owed to them including proper overtime compensation for all their hours worked;

b. All persons who are or were employed by Defendants in the state of California, as hourly non-exempt employees who, within the liability period, were not accurately and fully paid all lawful wages owed to them including minimum wage for all their hours worked

c. All persons who are or were employed by Defendants in the state of California, as hourly non exempt employees who, within the liability period, have not been provided an uninterrupted 30 minute meal period when they worked over five hours in a work shift by the end of the fifth hour and/ or a second 30 minute meal period when they worked over 10 hours in a shift by the end of the tenth hour and were not provided compensation in lieu thereof;

d. All persons who are or were employed by Defendants in the state of California, as hourly non exempt employees who, within the liability period, have not been provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day and were not provided compensation in lieu thereof;

e. All persons who are or were employed by Defendants in the state of

1 California as hourly non- exempt employees who, within the liability period, were not timely
2 paid all wages due and owed to them upon the termination of their employment with
3 Defendants; and

4 f. All persons who are or were employed by Defendants in the state of
5 California as hourly non- exempt employees who, within the liability period, were not provided
6 with accurate and complete itemized wage statements.

7 24. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to
8 amend or modify the class description with greater specificity or further division into
9 subclasses or limitation to particular issues.

10 25. This action has been brought and may properly be maintained as a class action
11 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
12 defined community of interest in the litigation and the proposed Class is easily ascertainable.

13 **A. Numerosity**

14 26. The potential members of the Class as defined are so numerous that joinder of all
15 the members of the Class is impracticable. While the precise number of Class Members has not
16 been determined at this time, Plaintiff is informed and believes that Defendants currently
17 employ, and/or during the relevant time period employed, approximately over 100 Non-
18 Exempt Employees in California who are or have been affected by Defendants' unlawful
19 practices as alleged herein.

20 **B. Commonality**

21 27. There are questions of law and fact common to the Class predominating over any
22 questions affecting only individual Class Members. These common questions of law and fact
23 include, without limitation:

- 24 i. Whether Defendants violated Labor Code sections 510, 1194 and applicable
25 IWC Wage Orders by failing to pay all earned wages including overtime compensation
26 to Non-Exempt Employees who worked in excess of eight (8) hours in a work day
27 and/or more than forty (40) hours in a workweek;

- 1 ii. Whether Defendants also violated Labor Codes sections 200, 1194, and 1197 for
2 failing to pay minimum wages for time spent working "off the clock" without pay.
3 Labor Code section 1197 provides that employees are to be paid minimum wage for
4 each hour worked, and cannot be averaged the minimum and the payment of a lesser
5 wage than the established is unlawful
- 6 iii. Whether Defendants violated Labor Code sections 226.7, 512 and applicable
7 IWC Wage Order by failing to provide statutorily compliant 30 minute meal periods to
8 Non-Exempt Employees on days in which they worked in excess of 5 hours and/or 10
9 hours and failing to compensate said employees one hour wages in lieu of meal
10 periods;
- 11 iv. Whether Defendants violated Labor Code section 226.7 and applicable IWC
12 Wage Orders by failing to authorize and permit minimum 10 minute rest periods to
13 Non-Exempt Employees for every four hours or major fraction thereof worked and
14 failing to compensate said employees one hour wages in lieu of rest periods;
- 15 v. Whether Defendants violated sections 201-203 of the Labor Code by failing to
16 pay all earned wages and/or premium wages due and owing at the time that any Class
17 Members' employment with Defendants terminated;
- 18 vi. Whether Defendants violated section 226 of the Labor Code and applicable
19 IWC Wage Orders by failing to, among other violations, maintain accurate records of
20 Non-Exempt Employees' earned wages, work periods, meal periods and deductions;
- 21 vii. Whether Defendants violated section 17200 *et seq.* of the Business and
22 Professions Code by failing to pay proper minimum and/or overtime wages to Non-
23 Exempt Employees; failing to provide proper rest and/or meal periods and failing to
24 pay compensation in lieu thereof; failing to pay wages due and owing at the time the
25 employee's employment with Defendants terminated failing to keep accurate records
26 all in violation of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512,
27 1194, and 1199 applicable IWC Wage Orders.
- 28

viii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code and Labor Code sections 201, 202, 203, 204, 225, 226, 226.7, 510, 512, 1194, and 1199, and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy;

C. Typicality

28. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

29. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

30. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

31. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Including Overtime Wages and/or Minimum Wage
(Lab. Code §§ 510, 1194, 1199)

(Against All Defendants)

32. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

33. During the liability Defendants' policies, practices and work shift requirements resulted in Plaintiff and Non-Exempt Employees working "off the clock" and not receiving compensation for all earned wages including overtime and/or minimum wage in violation of California state wage and hour laws.

34. During the liability Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees working in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

35. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees not receiving minimum wages for time spent working off the clock while subject to the control of Defendant all without pay. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser wage than the established is unlawful.

36. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to represent have been deprived of compensation for all earned wages including minimum wage and/ or overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

37. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

Second Cause of Action

Failure to Provide Lawful Meal Periods

Or Compensation in Lieu Thereof

(Lab. Code §§226.7, 512, IWC Wage Orders)

(Against All Defendants)

1 38. Plaintiff repeats and incorporates herein by reference each and every allegation
2 set forth above, as though fully set forth herein.

3 39. As alleged herein, by their failure to provide 30 minute uninterrupted meal
4 periods by the end of the fifth hour for days on which Non-Exempt employees work(ed) work
5 periods in excess of 5 hours and/or failing to provide a second 30 minute uninterrupted meal
6 period for days in which the Non Exempt Employees worked shifts in excess of 10 hours and
7 failing to provide compensation for such statutorily non-compliant meal periods, Defendants
8 violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

9 40. By failing to record and maintain adequate and accurate time records according
10 to sections 226 and 1174 (d) of the Labor Code, Defendants have injured Plaintiff and Class
11 Members and made it difficult to calculate the unpaid meal period compensation due Plaintiff
12 and Class Members.

13 41. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks
14 to represent have been deprived of premium wages in amounts to be determined at trial, and are
15 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
16 §226.7.

17 42. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
18 described herein and below.

19 **Third Cause of Action**
20 Failure to Provide Rest Periods
21 Or Compensation in Lieu Thereof
22 (Lab. Code §§226.7, IWC Wage Orders)
23 (Against All Defendants)

24 43. Plaintiff repeats and incorporates herein by reference each and every allegation
25 set forth above, as though fully set forth herein.

26 44. As alleged herein, by their failure to provide a minimum ten (10) minute rest
27 period for every four hours or major fraction thereof worked per day by Non Exempt
28 Employees, and failing to provide compensation for such non-provided rest periods, as alleged
above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC
applicable Wage Orders.

1 45. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks
2 to represent have been deprived of premium wages in amounts to be determined at trial, and are
3 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
4 §226.7.

5 46. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
6 described herein and below.

7
8 **Fourth Cause of Action**
9 Failure to Timely Pay Wages Due At Termination
10 (Lab. Code §§ 201-203)
 (Against All Defendants)

11 47. Plaintiff repeats and incorporates herein by reference each and every allegation
12 set forth above, as though fully set forth herein.

13 48. Sections 201 and 202 of the California Labor Code require Defendants to pay its
14 employees all wages due within 72 hours of termination of employment. Section 203 of the
15 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
16 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid
17 in full or an action is commenced. The penalty cannot exceed 30 days of wages.

18 49. Affected class members are entitled to compensation for all forms of wages
19 earned, including overtime compensation and compensation for non provided rest and meal
20 periods but to date have not received such compensation therefore entitling them Labor Code
21 section 203 penalties.

22 50. More than 30 days have passed since Plaintiff and affected Class Members have
23 left Defendants' employ, and on information and belief, have not received payment pursuant to
24 Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned
25 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
26 section 203 for failure to pay legal wages.

27 51. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
28 described herein and below.

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

Fifth Cause of Action
Knowing and Intentional Failure to Comply With Itemized Employee
Wage Statement Provisions
(Lab. Code § 226(b))
(Against All Defendants)

52. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein

53. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the members of the proposed class. IWC Wage Orders require Defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the members of the proposed class. On information and belief, Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226

54. Plaintiff and Class Members have been injured by Defendants’ actions by rendering them unaware of the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

55. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

56. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

Sixth Cause of Action
Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

57. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

1
2 58. Business & Professions Code Section 17200 provides:

3 As used in the chapter, unfair competition shall mean and include any **unlawful,**
4 **unfair** or fraudulent business act or practice and unfair, deceptive, untrue or
5 misleading advertising and any act prohibited by Chapter 1 (commencing with
6 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)
(Emphasis added.)

7 59. Defendants' violations of the Labor Code and Wage Order provisions set forth
8 above constitute unlawful and/or unfair business acts or practices.

9 60. The actions of Defendants, as alleged within this Complaint, constitute false,
10 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of
11 Business and Professions Code section 17200, *et seq.*

12 61. Plaintiff and Class Members have been personally aggrieved by Defendants'
13 unlawful and unfair business acts and practices alleged herein.

14 62. As a direct and proximate result of the unfair business practices of Defendants,
15 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is
16 entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and
17 members of the Plaintiff Class as a result of the business acts and practices described herein.

18 63. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
19 described herein and below. .

20
21 **VII.**

22 **PRAYER**

23 WHEREFORE, Plaintiff prays for judgment as follows:

- 24 1. That the Court determine that this action may be maintained as a class action;
25 2. For compensatory damages in an amount according to proof with interest thereon;
26 3. For economic and/or special damages in an amount according to proof with interest
27 thereon;
28 4. For premium wages pursuant to Labor Code §§ 226.7 and 512;

- 1 5. For premium pay and penalties pursuant to Labor Code §203, 226;
2 6. For attorneys' fees, interests and costs of suit under Labor Code §§ 226,1194;
3 7. For such other and further relief as the Court deems just and proper.
4

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.
7

8
9 **Dated: May 27, 2020**

JAMES HAWKINS, APLC

10 
11

12 Isandra Y. Fernandez, Esq.
13 Attorneys for Plaintiff
14 Margaret Green
15
16
17
18
19
20
21
22
23
24
25
26
27
28