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12 on behalf of herself and similarly situated employees

13 **SUPERIOR COURT OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN JOAQUIN**

15 LINDA HUDSON, as an individual, and on)
16 behalf of all others similarly situated,)

17 Plaintiff,)

18 vs.)

19 STOCKTON NURSING AND REHAB)
20 CENTER, LLC, a California Limited)
21 Liability Company; EDURO)
22 HEALTHCARE, LLC, a Delaware Limited)
23 Liability Company; DYCORA)
24 TRANSITIONAL HEALTH –)
25 STOCKTON, LLC, a California Limited)
26 Liability Company; GRANT GARRISON)
27 an individual; and DOES 1 to 100,)
28 inclusive,)

Defendants.)

Case No. STK-CV-UOE-2020-0008507

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES**

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

JURY TRIAL DEMANDED

1 Plaintiff LINDA HUDSON (“Plaintiff”), hereby file this Class Action Complaint against
2 Defendants STOCKTON NURSING AND REHAB CENTER, LLC, a California Limited Liability
3 Company; EDURO HEALTHCARE, LLC, a Delaware Limited Liability Company; DYCORA
4 TRANSITIONAL HEALTH – STOCKTON, LLC, a California Limited Liability Company;
5 GRANT GARRISON an individual; and DOES 1 to 100, inclusive. On information and belief,
6 Plaintiff alleges the following:

7 **INTRODUCTION**

8 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought
9 by Plaintiff for failure to pay minimum wages, failure to pay overtime wages, meal period violations,
10 rest period violations, wage statement violations, failure to timely pay final wages, failure to
11 reimburse expenses, and unfair competition. Plaintiff seeks these unpaid wages and penalties, plus
12 interest and attorney’s fees, on behalf of herself and similarly situated employees.

13 2. Plaintiff LINDA HUDSON is an individual over the age of eighteen (18) and is now
14 and/or at all times mentioned in this Complaint was a resident of the State of California.

15 3. Plaintiff is informed and believes, and thereupon alleges, that STOCKTON
16 NURSING AND REHAB CENTER LLC., is now and/or at all times mentioned in this Complaint
17 was a California Limited Liability Company and the owner and operator of an industry, business
18 and/or facility licensed to do business and actually doing business in the State of California.

19 4. Plaintiff is informed and believes, and thereupon alleges, that EDURO
20 HEALTHCARE, LLC., is now and/or at all times mentioned in this Complaint was a Delaware
21 Limited Liability Company and the owner and operator of an industry, business and/or facility
22 licensed to do business and actually doing business in the State of California.

23 5. Plaintiff is informed and believes, and thereupon alleges, that DYCORA
24 TRANSITIONAL HEALTH – STOCKTON, LLC., is now and/or at all times mentioned in this
25 Complaint was a California Limited Liability Company and the owner and operator of an industry,
26 business and/or facility licensed to do business and actually doing business in the State of California.

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6. Plaintiff is informed and believes, and thereupon alleges, that GRANT GARRISON is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a resident of the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that GRANT GARRISON is an owner, director, officer, or managing agent of STOCKTON NURSING AND REHAB CENTER LLC., and EDURO HEALTHCARE, LLC. GRANT GARRISON developed, maintained, implemented, and caused the unlawful wage and hour practices described herein to occur. As such GRANT GARRISON is individually liable pursuant to California Labor Code section 558.1.

8. DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of STOCKTON NURSING AND REHAB CENTER LLC., EDURO HEALTHCARE, LLC., and DYCORA TRANSITIONAL HEALTH – STOCKTON, LLC., corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. Defendants are jointly and severally liable to Plaintiff.

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

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

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

JURISDICTION AND VENUE

12. The San Joaquin Superior Court has jurisdiction in this matter due to alleged violations of California Labor Code sections 510, 1194, 226.7, 226, 201-203, Business and

1 Professions Code section 17200 *et seq.*, and Industrial Welfare Commission Wage Order (“Wage
2 Order”) 5.

3 13. Venue is proper pursuant to Civil Procedure Code sections 395(a) and 395.5, in that
4 some of the wrongful acts and violations of law asserted herein occurred within San Joaquin County.
5 Additionally, Defendants’ obligation to pay wages, including overtime wages, and meal and rest
6 period premiums, arose in Sacramento County pursuant to *Madera Police Officers Assn. v. City of*
7 *Madera*, 36 Cal.3d 403, 414 (1984).

8 14. Plaintiff sought permission pursuant to Labor Code section 2699, *et seq.* to pursue the
9 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of
10 herself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
11 Plaintiff gave written notice via online submission to the Labor and Workforce Development
12 Agency (“LWDA”) on approximately August 26, 2020. Plaintiff provided facts and legal bases for
13 her claims within the notice to the LWDA on all violations asserted under the Private Attorneys
14 General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The August 26, 2020
15 notice was also sent via certified mail to Defendants on the same day. Plaintiff is informed and
16 believes, that to date, the LWDA has not provided any response to Plaintiff’s notice correspondence.
17 Accordingly, Plaintiff is informed and believes that she has exhausted all administrative remedies
18 pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of
19 herself and all Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
20 *Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

21 CLASS ALLEGATIONS

22 15. Plaintiff brings the First through Eighth Causes of Action on behalf of herself and all
23 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
24 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

25 all non-exempt employees who have, or continue to, work for
26 Defendants in California from October 7, 2016 to the present.

27 16. This action may be maintained as a class action because there is a well-defined
28 community of interests in the litigation and the proposed class is easily ascertainable.

1 17. Numerosity: The Plaintiff Class is so numerous that the individual joinder of all
2 members is impracticable. While the actual number of class members is unknown to Plaintiff at this
3 time, Plaintiff is informed and believes that more than approximately 200 individuals were subjected
4 to the practices outlined in this Complaint relating to the First through Eighth Causes of Action.

5 18. Common Questions Predominate: Common questions of law and fact exist as to all
6 members of the Plaintiff Class and predominate over questions that affect only individual class
7 members. These common questions of law and fact include, without limitation, the following:

- 8 1) Whether Defendant kept an accurate record of all hours worked by Plaintiff and
9 members of the Plaintiff's Class;
- 10 2) Whether Defendant paid Plaintiff and members of the Plaintiff's Class for all hours
11 worked;
- 12 3) Whether Defendant paid Plaintiff and members of the Plaintiff's Class at least
13 minimum wage for all hours worked;
- 14 4) Whether Defendant properly paid Plaintiff and members of the Plaintiff's Class for all
15 overtime hours worked;
- 16 5) Whether Plaintiff and members of the Plaintiff's Class worked over eight (8) hours in
17 a day;
- 18 6) Whether Plaintiff and members of the Plaintiff's Class worked over forty (40) hours
19 in a week;
- 20 7) Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
21 members of the Plaintiff's Class for all hours worked;
- 22 8) Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
23 members of the Plaintiff's Class for all overtime hours worked;
- 24 9) Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
25 members of the Plaintiff's Class for all reimbursement expenses;
- 26 10) Whether Defendants had a policy and/or practice allowing for, or providing, Plaintiff
27 and members of the Plaintiff's Class meal periods as required by law;

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- 1 11) Whether Defendants had a policy and/or practice allowing for or providing Plaintiff
2 and members of the Plaintiff's Class rest periods as required by law;
3 12) Whether Defendants accurately stated all required information on paystubs issued to
4 Plaintiff and members of the Plaintiff's Class; and
5 13) Whether Defendants provided Plaintiff and members of the Plaintiff's Class their
6 final wages in compliance with Labor Code sections 201 to 203.

7 19. Typicality: Plaintiff's claims are typical of the claims for the members of the
8 Plaintiff Class. Plaintiff also sustained damages arising out of Defendants' common course of
9 conduct in violation of the law as complained of herein. As a result, each putative class member
10 will have the same basis for unpaid wage claims as does Plaintiff.

11 20. Adequacy: Plaintiff will fairly and adequately protect the interests of the members
12 of the Plaintiff Class. Plaintiff has no interests which are adverse to those of absent class
13 members. Additionally, Plaintiff has retained counsel who has substantial experience in complex
14 civil litigation and employment law matters.

15 21. Superiority: A class action is superior to other available means for the fair and
16 efficient adjudication of the controversy since individual joinder of all members of the class is
17 impracticable. Class action treatment will permit a larger number of similarly situated employees
18 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
19 unnecessary duplication of effort and expense that numerous individual actions would engender.
20 Further, as damages suffered by each individual member of the class may be relatively small, the
21 expenses and burden of the individual litigation would make it difficult or impossible for
22 individual members of the class to redress wrongs done to them, and an important public interest
23 will be served by addressing the matter as a class action. The cost to the court system of
24 adjudication of such individualized litigation would be substantial. Individualized litigation
25 would also present the potential for inconsistent or contradictory judgments.

26 22. Plaintiff is unaware of any difficulties that are likely to be encountered in the
27 management of this action that would preclude its maintenance as a class action.

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GENERAL ALLEGATIONS

23. Plaintiff incorporates by reference and re-allege paragraphs 1 through 22 as though fully set forth herein.

24. Plaintiff LINDA HUDSON, a 61-year-old, African American, licensed vocational nurse, began working at the Stockton Nursing and Rehab Facility (formerly Golden Living Hy-Pana), as a Unit Manager in or around 2013. At the time Plaintiff was hired, the facility was owned and operated by Golden Living. Sometime thereafter, in or around December 2014, the facility was taken over by DYCORA TRANSITIONAL HEALTH – STOCKTON, LLC. DYCORA operated the facility until June 2019, when EDURO HEALTHCARE, LLC, took over operations, doing business as STOCKTON NURSING AND REHAB CENTER, LLC.

25. Plaintiff held a few positions over the years, including Unit Manager, and most recently Treatment Nurse and Director of Staff Development. Specifically, since EDURO HEALTHCARE, LLC., took over operations in June 2019, Plaintiff was a Treatment Nurse until November 2019, when she was promoted to Director of Staff Development and put into a salaried, exempt position.

26. Over the time Plaintiff was working for Defendants as a non-exempt employee (June 2019 through November 2019), Defendants failed to pay Plaintiff and similarly situated employees for all hours worked. For instance, due to an inadequate number of computers or internet connection issues, Plaintiff and similarly situated employees sometimes had to wait several minutes before they were able to clock in for work. This issue was particularly problematic for Certified Nurse Assistants (“CNAs”) and kitchen staff because there was only one computer available for them to log in and out of work. Defendants were aware of this time keeping issue and knew that it resulted in minimum wages and overtime wages being forfeited by Plaintiff and similarly situated employees.

27. In addition to this, there were other instances where Defendants failed to pay Plaintiff and similarly situated employees for all hours worked. Specifically, due to chronic understaffing, there were instances when Plaintiff and similarly situated employees had to work off-the-clock to get their work done for the day. Even though Plaintiff and similarly situated employees would officially clock out for the day, it was not unusual for them to continue to work so they could finish patient

1 treatments and paperwork. If these tasks and paperwork did not get completed, Plaintiff and
2 similarly situated employees would be questioned by supervisors, as well as the incoming shift.
3 Plaintiff estimates that this would occur approximately once or twice per week, resulting in
4 approximately thirty (30) minutes of unpaid, off-the-clock work per week. Defendants were aware
5 that Plaintiff and similarly situated employees were working off-the-clock, but, nonetheless, failed to
6 provide the staff and resources available so that their employees could stop working at their
7 regularly scheduled time.

8 28. Plaintiff and similarly situated employees also worked schedules that required them
9 to either take their meal and rest periods late or not at all. For instance, staffing and workflow issues
10 at the facility made it difficult for Plaintiff and similarly situated employees to take a meal period
11 before the end of their fifth hour of work approximately fifty (50) percent of the time. Without
12 someone scheduled to relieve Plaintiff of her patient duties, she could not reasonably leave a patient
13 she was treating and go take a meal or rest break. Defendants were aware of this problem but failed
14 to schedule sufficient staff that would allow Plaintiff and similarly situated employees to take their
15 interrupted meal and rest periods. As such, Defendants' staffing and workflow policies discouraged
16 and prevented Plaintiff and similarly situated employees from taking their uninterrupted thirty (30)
17 minute meal periods and ten (10) minute rest periods approximately fifty (50) percent of the time.

18 29. Defendants also failed to reimburse Plaintiff and similarly situated employees for
19 their use of personal cell phones for work purposes. Plaintiff estimates that she and similarly
20 situated employees had to use their cell phones, while at work, approximately two (2) times a week
21 to call doctors, staff, or family members of residents due to there being limited company phones
22 available. Defendants were aware of Plaintiff and similarly situated employees use of their cell
23 phones for work-related communications, yet they failed to reimburse Plaintiff and similarly situated
24 employees for their cell phone use.

25 30. As a result of Defendants' failure to pay Plaintiff and similarly situated employees for
26 all time worked, failure to pay reimbursement expenses, and failure to pay meal and rest period
27 premiums, Defendants failed to provide all final wages owed to Plaintiff and similarly situated
28 employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their

1 resignation. In addition, Defendants failed to keep accurate time records and failed to provide
2 Plaintiff and similarly situated employees with accurate wage statements. The wage statements
3 Defendants provided to Plaintiff and similarly situated employees did not accurately state their total
4 regular hours worked, gross wages and net wages, and all deductions made.

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME**
8 **(As to All Defendants)**

9 31. Plaintiff incorporates by reference and re-allege paragraphs 1 through 30 as though
10 fully set forth herein.

11 32. During the period Plaintiff was employed by Defendants, Defendants were required
12 to compensate her for one and one-half (1½) times the regular rate of pay for hours worked in
13 excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular
14 rate of pay for hours worked in excess of twelve (12) hours per day or in excess of eight (8) hours
15 per day on the seventh (7th) day of work. *See, e.g.,* Cal. Labor Code §§ 510, 1194. Plaintiff and
16 similarly situated employees regularly worked over eight (8) hours in a day or forty (40) hours in a
17 week, but Defendants failed to pay all overtime wages owed to them.

18 33. Plaintiff and similarly situated employees were non-exempt employee under the
19 administrative, executive, or professional exemptions, the applicable Wage Order, and California
20 Labor Code section 510.

21 34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
22 employees have been damaged as stated in the section below entitled "DAMAGES," which is
23 incorporated here to the extent pertinent as if set forth here in full.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PAY MINIMUM WAGES**
26 **(As to all Defendants)**

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

36. For the period preceding the filing of this Complaint, Defendants were required to
compensate California's minimum wage of \$8.00 per hour (beginning January 1, 2008), \$9.00 per

1 hour (beginning July 1, 2014), \$10.00 per hour (beginning January 1, 2016), \$10.50 per hour
2 (beginning January 1, 2017, for employers with twenty-six (26) or more employees) or \$10.00 per
3 hour (beginning January 1, 2017, for employers with twenty-five (25) or less employees), \$11.00 per
4 hour (beginning January 1, 2018, for employers with twenty-six (26) or more employees) or \$10.50
5 per hour (beginning January 1, 2018, for employers with twenty-five (25) or less employees), \$12.00
6 per hour (beginning January 1, 2019, for employers with twenty-six (26) or more employees) or
7 \$11.00 per hour (beginning January 1, 2019, for employers with twenty-five (25) or less employees),
8 and \$13.00 per hour (beginning January 1, 2020, for employers with twenty-six (26) or more
9 employees) or \$12.00 per hour (beginning January 1, 2020, for employers with twenty-five (25) or
10 less employees). *See, e.g.*, IWC Wage Order, No. 5, section 4(A); Cal. Labor Code § 1194.

11 37. Over the relevant time, Plaintiff was not exempt to the State's Minimum Wage
12 Orders. Defendants were aware of its obligation to pay the minimum wage for each hour worked but
13 failed to do so.

14 38. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
15 employees have been damaged as stated in the section below entitled "DAMAGES," which is
16 incorporated here to the extent pertinent as if set forth here in full.

17 **THIRD CAUSE OF ACTION**
18 **FAILURE TO PROVIDE MEAL PERIODS**
19 **(As to All Defendants)**

20 39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38 as though
21 fully set forth herein.

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

24 41. Labor Code sections 226.7 and 512 and Wage Order 5, section 11(A) require an
25 employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work
26 period of more than five (5) hours.

27 42. Labor Code section 512 and Wage Order 5, section 11(B) further provide that
28 employers may not employ employees for a work period for more than ten (10) hours per day
without providing the employee with a second meal period of at least thirty (30) minutes. However,

1 if the total hours worked is no more than twelve (12) hours, the second meal period may be waived
2 so long as there was no waiver as to the first meal period.

3 43. Plaintiff and similarly situated employees allege that Defendants employed Plaintiff
4 and similarly situated employees for periods of more than five (5) hours without providing meal
5 periods of at least thirty (30) minutes and did not provide a first meal period before the completion
6 of their fifth hour of work. Plaintiff and similarly situated employees did not waive their rights to
7 any meal periods throughout their employment relationship.

8 44. Defendants further failed to pay Plaintiff and similarly situated employees the
9 applicable meal period premiums for any such missed meal breaks.

10 45. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
11 employees have been damaged as stated in the section below entitled "DAMAGES," which is
12 incorporated here to the extent pertinent as if set forth here in full.

13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE REST PERIODS**
(As to All Defendants)

15 46. Plaintiff incorporates by reference and re-allege paragraphs 1 through 45 as though
16 fully set forth herein.

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

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

22 49. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
23 situated employees to take rest breaks of at least ten (10) minutes for each work period that Plaintiff
24 and similarly situated employees worked more than four (4) hours or a major fraction thereof.

25 50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
26 employees have been damaged as stated in the section below entitled "DAMAGES," which is
27 incorporated here to the extent pertinent as if set forth here in full.

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FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(As to All Defendants)

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

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

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

53. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in Labor Code section 226(a). Specifically, Defendants did not itemize all applicable hourly rates in effect during the pay period, all overtime hours worked and corresponding overtime rates, and gross and net wages earned. As a result, Plaintiff and similarly situated employees were not able to determine the total wages owed to them from their paystubs alone.

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54. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

55. Plaintiff incorporates by reference and re-allege(s) paragraphs 1 through 54 as though fully set forth herein.

56. California Labor Code section 2802(a) states that “An 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.”

57. Defendants required Plaintiff and similarly situated employees to use their cell phones for work purposes but failed to reimburse them for such use.

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

SEVENTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to All Defendants)

59. Plaintiff incorporates by reference and re-allege paragraphs 1 through 58 as though fully set forth herein.

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

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

62. Plaintiff and similarly situated employees did not receive all wages, including overtime compensation, and meal and rest period premiums at Plaintiff's and similarly situated employees' termination or within the required time after Plaintiff's and similarly situated employees'

1 separation from employment.

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

5 64. Defendants knew of their obligation to pay Plaintiff and similarly situated employees
6 all wages owed when their employment ended. Indeed, Defendants had knowledge it did not
7 compensate Plaintiff and similarly situated employees for all minimum wages, overtime wages and
8 missed meal and rest period premiums. Such conduct shows Defendants' knowledge of their
9 obligation to pay Plaintiff and similarly situated employees' overtime wages and missed meal and
10 rest period premiums upon termination and/or separation and their willful refusal.

11 65. As a proximate result of the Defendants' conduct, Plaintiff and similarly situated
12 employees have been damaged and deprived of their wages and thereby seek their daily rate of pay
13 multiplied by thirty (30) days for Defendants' failure to pay all wages due.

14 **EIGHTH CAUSE OF ACTION**
15 **UNFAIR COMPETITION**
16 **STOCKTON NURSING AND REHAB CENTER, LLC., EDURO HEALTHCARE, LLC., and**
DYCORA TRANSITIONAL HEALTH – STOCKTON, LLC.

17 66. Plaintiff incorporates by reference and re-allege paragraphs 1 through 65 as though
18 fully set forth herein.

19 67. Unfair competition shall mean and include any unlawful, unfair or fraudulent
20 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
21 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business
22 and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

23 68. Plaintiff and similarly situated employees were not paid all overtime wages and
24 missed meal and rest period premiums.

25 69. Plaintiff is also informed and believes and thereon alleges that such actions and/or
26 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
27 Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.
28 4th 163 (2000).

70. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code § 17203), Plaintiff and similarly situated employees are entitled to restitution as a result of Defendants' unfair business practices, including, but not limited to, unpaid wages and interest pursuant to Business and Professions Code section 17203, 17208 in an amount to be proven at trial.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to All Defendants)

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

72. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages);
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements);
- Violation of Labor Code §§ 226.3, 1174, 1198; IWC Wage Order 5, § 7(A) (Failure to Maintain Accurate Records);
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 226.7; IWC Wage Order 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);

- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave); and

- Violation of Labor Code § 2802 (Failure to Provide Reimbursements).

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

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

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount proven at trial;
 - b. Interest for the wages due pursuant to Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third and Fourth Cause of Action:
 - a. Wages in an amount proven at trial;
 - b. Attorney's fees and costs and interest pursuant to Labor Code sections 218.5 and 218.6, and to California Code of Civil Procedure section 1021.5;
5. As to the Fifth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of

1 all actual damages or fifty dollars (\$50) for the initial pay period in which the
2 violation occurred and one hundred dollars (\$100) per employee for each
3 violation in the subsequent pay periods, but not to exceed four thousand
4 dollars (\$4,000);

5 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code
6 section 226(e);

7 6. As to the Sixth Cause of Action:

8 a. An amount proven at trial;

9 b. Attorney's fees and costs and interest pursuant to Labor Code section 2802(c);

10 7. As to the Ninth Cause of Action:

11 a. For civil penalties as provided for in the Labor Code for each enumerated
12 violation;

13 b. For those Labor Code sections, the violation of which there is no civil penalty
14 provided, the default penalty provided in Labor Code section 2699(f): for any
15 initial violation, one hundred dollars (\$100) for each Aggrieved Employee per
16 pay period; For any subsequent violation, two hundred dollars (\$200) for each
17 Aggrieved Employee per pay period;

18 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

19 d. For any other remedies as allowed by law and/or deemed appropriate by the
20 Court;

21 8. For such other and further relief as this Court may deem just and proper, including,
22 but not limited to:

23 a. Wages as proved at trial;

24 b. Injunctive and Declaratory relief;

25 c. Reasonable attorney's fees and costs as provided by law; and

26 d. Interest.
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1 Dated: November 6, 2020

Shimoda Law Corp.

2
3 By:



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