

APR 06 2021

Sherri E. Carter, Executive Office/Clerk
By: Malsha Pryor, Deputy

Edwin Aiwazian (SBN 232943)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ASHLEY SIMPSON, individually, and on
behalf of other members of the general public
similarly situated, and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

CHOICE HOMECARE, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 19STCV20172

Honorable Kenneth R. Freeman
Department SSC14

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES &
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Business & Professions Code §§ 17200, et seq.;
- (9) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004);
- (10) Violation of Fair Labor Standards Act, 29 U.S.C. § 207 (Unpaid Overtime);

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff ASHLEY SIMPSON (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Los Angeles. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Los Angeles. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of Los Angeles.

PARTIES

5. Plaintiff ASHLEY SIMPSON is an individual residing in the State of California, County of Los Angeles.

6. Defendant CHOICE HOMECARE, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the

County of Los Angeles.

7. At all relevant times, Defendant CHOICE HOMECARE, INC. was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants CHOICE HOMECARE, INC. and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendant CHOICE HOMECARE, INC. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

11. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiff bring this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California

Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid employees misclassified as “exempt” who worked for any of the Defendants within the State of California at any time during the period from June 11, 2015 to final judgment.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

b. Typicality: Plaintiff’s claims are typical of all other class members’ as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff’s attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys’ fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

///

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code and the Fair Labor Standards Act ("FLSA"), was willful;

b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;

c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day, over forty (40) hours per week, and/or six (6) consecutive days per workweek and failed to pay the legally required overtime compensation, in accordance with the California Labor Code and FLSA, to Plaintiff and the other class members;

d. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class

- 1 members to work during meal and/or rest periods without compensation;
- 2 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
- 3 other class members for all hours worked;
- 4 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
- 5 class members within the required time upon their discharge or
- 6 resignation;
- 7 g. Whether Defendants failed to timely pay all wages due to Plaintiff and
- 8 the other class members during their employment;
- 9 h. Whether Defendants complied with wage reporting as required by the
- 10 California Labor Code; including, *inter alia*, section 226;
- 11 i. Whether Defendants kept complete and accurate payroll records as
- 12 required by the California Labor Code, including, *inter alia*, section
- 13 1174(d);
- 14 j. Whether Defendants failed to pay reporting time pay to Plaintiff and the
- 15 other class members;
- 16 k. Whether Defendants failed to reimburse Plaintiff and the other class
- 17 members for necessary business-related expenses and costs;
- 18 l. Whether Defendants' conduct was willful or reckless;
- 19 m. Whether Defendants engaged in unfair business practices in violation of
- 20 California Business & Professions Code section 17200, et seq.;
- 21 n. The appropriate amount of damages, restitution, and/or monetary
- 22 penalties resulting from Defendants' violation of California law; and
- 23 o. The appropriate amount of damages, restitution, and/or monetary
- 24 penalties resulting from Defendants' violation of California law and the
- 25 FLSA; and
- 26 p. Whether Plaintiff and the other class members are entitled to
- 27 compensatory damages pursuant to the California Labor Code.
- 28 ///

PAGA ALLEGATIONS

17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

18. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

19. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by Defendants and the alleged violator and against whom one or more of the alleged violations were committed.

20. Plaintiff was employed by Defendants and the alleged violations were committed against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

22. The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's 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.

23. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employer 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)

24. On August 4, 2020, Plaintiff provided written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1197, 1197.1, 1198, 1454, 2800, and 2802, have been satisfied.

25. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or exempt employees within the State of California, including the County of Los Angeles.

26. Defendants, jointly and severally, employed Plaintiff as an hourly-paid employee in the position of “Caregiver,” from approximately December 2015 to approximately August 2017, in the State of California, County of Los Angeles. As a Caregiver, Plaintiff’s job duties included, but were not limited to, making grocery trips, picking up children from school, assisting children with homework, shopping for clothes, cleaning houses, doing laundry, washing dishes, and preparing meals.

27. Defendants hired Plaintiff and the other class members, misclassified them as “exempt” from the applicable IWC Wage Order, and failed to compensate them for all hours worked and short, late, interrupted, and/or missed meal periods and/or rest breaks.

28. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

29. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff

1 and the other class members.

2 30. Defendants directly hired and paid wages and benefits to Plaintiff and the other
3 class members.

4 31. Defendants continue to employ hourly-paid employees misclassified as
5 “exempt” within the State of California.

6 32. Plaintiff and the other class members worked over eight (8) hours in a day, forty
7 (40) hours in a week, and/or over six (6) consecutive days in a workweek during their
8 employment with Defendants.

9 33. Plaintiff and the other class members worked over nine (9) hours in a day during
10 their employment with Defendants.

11 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid
13 employees within the State of California. This pattern and practice involved, *inter alia*,
14 misclassifying their positions as “exempt” employees when, in fact, they were “non-exempt”
15 employees according to California law and failing to pay them for all hours worked and for
16 short, late, interrupted, and/or missed meal periods and rest breaks, and failing to provide
17 reporting time pay in violation of California law.

18 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and the other class members were entitled to receive
20 certain wages for overtime compensation and that they were not receiving accurate overtime
21 compensation for all overtime hours worked.

22 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and the other class members were entitled to pay
24 equal to half the usual or scheduled day’s work in an amount no less than two (2) hours nor
25 more than four (4) hours at the employee’s regular rate of pay for each workday in which
26 Plaintiff and the other class members were required to report to work and were furnished less
27 than half the usual or scheduled day’s work.

28 ///

1 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to pay
3 equal to no less than two hours at Plaintiff's and the other class members' regular rate of pay
4 for each day in which Plaintiff and the other class members were required to report for work a
5 second time in one workday and were furnished less than two hours of work on the second
6 reporting.

7 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed to provide Plaintiff and the other class members all required rest and meal periods during
9 the relevant time period as required under the Industrial Welfare Commission Wage Orders
10 and thus they are entitled to any and all applicable penalties.

11 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 failed to relieve Plaintiff and other class members of all duties, failed to relinquish control over
13 Plaintiff and the other class members' activities, failed to permit Plaintiff and the other class
14 members a reasonable opportunity to take, and impeded or discouraged them from taking thirty
15 (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for
16 shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal
17 breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

18 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and the other class members were entitled to receive
20 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
21 member's regular rate of pay when a meal period was short, late, interrupted, and/or missed,
22 and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's
23 and the other class member's regular rate of pay when a meal period was short, late,
24 interrupted, and/or missed. During the relevant time period, Plaintiff and the other class
25 members' meal periods were missed, shortened, late and/or interrupted because Defendants
26 required them to perform work duties. Plaintiff did not receive premium payments for meal
27 periods that were not provided.

28 ///

1 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to provide, authorize, and permit Plaintiff and other class members take full,
3 uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6)
4 hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten
5 (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest
6 breaks in the middle of each work period.

7 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other class members were entitled to receive
9 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
10 member's regular rate of pay when a rest period was short, late, interrupted, and/or missed, and
11 they did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and
12 the other class members' regular rate of pay when a rest period was short, late, interrupted,
13 and/or missed. During the relevant time period, Plaintiff's and the other class members' rest
14 periods were missed, short, late and/or interrupted because Defendants required them to
15 perform work duties during their purported rest periods. Plaintiff did not receive premium
16 payments for rest periods that were not authorized or permitted.

17 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to receive
19 at least minimum wages for compensation and that they were not receiving at least minimum
20 wages for all hours worked. Defendants' failure to pay minimum wages included, *inter alia*.
21 Defendants' effective payment of zero dollars per hour for all hours Plaintiff and the other
22 class members worked off the clock performing work duties.

23 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and the other class members were entitled to receive
25 all wages owed to them upon discharge or resignation, including earned but unpaid overtime
26 and minimum wages, reporting time pay, and meal and rest period premiums, and they did not,
27 in fact, receive all such wages owed to them at the time of their discharge or resignation.

28 ///

1 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all wages owed to them during their employment. Plaintiff and the other class members did
4 not receive payment of all wages, including earned but unpaid overtime wages, minimum
5 wages, reporting time pay, and meal and rest period premiums, within any time permissible
6 under California Labor Code section 204.

7 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other class members were entitled to receive
9 complete and accurate wage statements in accordance with California law, but, in fact, they did
10 not receive complete and accurate wage statements from Defendants. The deficiencies
11 included, *inter alia*, the failure to include accurate the total number of hours worked by
12 Plaintiff and the other class members and the accurate net/gross wages earned.

13 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Defendants had to keep complete and accurate payroll records
15 for Plaintiff and the other class members in accordance with California law, but, in fact, did
16 not keep complete and accurate payroll records reflecting the accurate hours worked and the
17 accurate wages earned by Plaintiff and the other class members.

18 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and the other class members were entitled to
20 reimbursement for necessary business-related expenses, including but not limited to, the use of
21 personal phones and vehicles for business-related purposes. Plaintiff and the other class
22 members used their personal phones to communicate with supervisors and drove personal
23 vehicle to run errands for clients.

24 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that they had a duty to compensate Plaintiff and the other class
26 members pursuant to California law, and that Defendants had the financial ability to pay such
27 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
28 represented to Plaintiff and the other class members that they were properly denied wages, all

1 in order to increase Defendants' profits.

2 50. During the relevant time period, Defendants failed to pay overtime wages to
3 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
4 class members were required to work more than eight (8) hours per day, forty (40) hours per
5 week, and/or for the first eight (8) hours worked on the seventh day of work in a workweek
6 without overtime compensation at one-and-one-half times the regular rate for all overtime
7 hours worked.

8 51. During the relevant time period, Defendants failed to provide all requisite
9 uninterrupted meal and rest periods to Plaintiff and the other class members.

10 52. During the relevant time period, Defendants failed to pay Plaintiff and the other
11 class members at least minimum wages for all hours worked, including work performed off-
12 the-clock. For example, Plaintiff and the other class members performed work before and after
13 their scheduled shifts, during meal and rest breaks, and when a shift was cancelled for
14 purported tardiness.

15 53. During the relevant time period, Defendants failed to pay Plaintiff and the other
16 class members for half their usual or scheduled day's work, in an amount no less than two (2)
17 hours nor more than (4) hours, at Plaintiff and the other class members' regular rate of pay for
18 each workday in which Plaintiff and the other class members were required to report to work,
19 did report to work, and were not put to work or were furnished less than half of said
20 employee's usual or scheduled day's work.

21 54. During the relevant time period, Defendants failed to pay Plaintiff and the other
22 class members for two hours at Plaintiff's and the other class members' regular rate of pay for
23 each day in which Plaintiff and the other class members were required to report for work a
24 second time in one workday and were furnished less than two hours of work on the second
25 reporting.

26 55. During the relevant time period, Defendants failed to pay Plaintiff and the other
27 class members all wages owed to them upon discharge or resignation, including earned but
28 unpaid overtime and minimum wages and meal and rest period premiums.

56. During the relevant time period, Defendants failed to pay Plaintiff and the other class members all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204, including earned but unpaid overtime and minimum wages and meal and rest period premiums.

57. During the relevant time period, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members. The deficiencies included, *inter alia*, the failure to include the accurate total number of hours worked by Plaintiff and the other class members and the accurate net/gross wages earned.

58. During the relevant time period, Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class members. The deficiencies included, *inter alia*, the failure to include the accurate total number of hours worked by Plaintiff and the other class members and the accurate net/gross wages earned.

59. During the relevant time period, Defendants failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs, including but not limited to, the use of personal phones and vehicles for business-related purposes.

60. During the relevant time period, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

61. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

62. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 61, and each and every part thereof with the same force and effect as though fully set forth herein.

///

63. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

64. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day, more than forty (40) hours in a week, , and/or more than six (6) consecutive days in a workweek at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day up to and including twelve (12) hours, more than forty (40) hours in a week, or the first eight (8) hours worked on the seventh day in a workweek.

65. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

66. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

67. California Labor Code section 1454 requires domestic work employees who are personal attendants to be compensated at a rate of 1.5x their regular rate of pay for all hours worked over 9 in any workday and for all hours worked more than 45 hours in the workweek. (Lab. Code §§ 1454). A “domestic work employee” is defined as “an individual who performs domestic work and includes live-in domestic work employees and personal attendants.” (Lab. Code §§ 1451)(b)(1).

///

68. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of six (6) consecutive days in a workweek, including performing work duties off-the-clock including, but not limited to, making grocery trips, picking up children from school, assisting children with homework, shopping for clothes, cleaning houses, doing laundry, washing dishes, and preparing meals.

69. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members. Plaintiff and the other class members did not receive overtime compensation at one-and-one-half times the regular hourly rate for all hours spent performing job duties in excess of eight (8) hours in a day or forty (40) hours in a week.

70. During the relevant time period, Defendant regularly required Plaintiff and the other class members to work over nine (9) hours per day but did not pay overtime compensation for that time worked.

71. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

72. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

73. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 72, and each and every part thereof with the same force and effect as though fully set forth herein.

74. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by

Defendants.

75. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

76. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

77. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

78. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

79. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

80. During the relevant time period, Plaintiff and the other class members' meal periods were missed, shortened, late, and/or interrupted because Defendants required them to

perform work duties including, but not limited to, making grocery trips, picking up children from school, assisting children with homework, shopping for clothes, cleaning houses, doing laundry, washing dishes, and preparing meals.

81. As a result, Defendants failed to relieve Plaintiff and the other class members of all duties, failed to relinquish control over Plaintiff and the other class members' activities, failed to permit Plaintiff and the other class members a reasonable opportunity to take, and impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work for shifts lasting more than ten (10) hours.

82. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

83. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

84. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

85. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

86. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 85, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 87. At all times herein set forth, the applicable IWC Wage Order and California
3 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'
4 employment by Defendants.

5 88. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any rest period mandated by an applicable
7 order of the California IWC.

8 89. At all relevant times, the applicable IWC Wage Order provides that "[e]very
9 employer shall authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period" and that the "rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof" unless the total daily work time is less than three and one-half
13 (3 ½) hours.

14 90. During the relevant time period, Defendants required Plaintiff and other class
15 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
16 rest period per each four (4) hour period worked.

17 91. During the relevant time period, Plaintiff's and the other class members' rest
18 periods were missed, short, late and/or interrupted because Defendants required them to
19 perform work duties during their purported rest periods, including, but not limited to, making
20 grocery trips, picking up children from school, assisting children with homework, shopping for
21 clothes, cleaning houses, doing laundry, washing dishes, and preparing meals.

22 92. As a result, Defendants failed to provide, authorize, or permit Plaintiff and the
23 other class members to take a full, uninterrupted, off-duty rest period for every shift lasting
24 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for
25 every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
26 permit, and provide such rest breaks in the middle of each work period.

27 93. During the relevant time period, Defendants willfully required Plaintiff and the
28 other class members to work during rest periods and failed to pay Plaintiff and the other class

members the full rest period premium for work performed during rest periods.

94. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

95. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

96. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

97. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 96, and each and every part thereof with the same force and effect as though fully set forth herein.

98. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

99. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

100. During the relevant time period, Plaintiff and the other class members were required to perform job duties off-the-clock, including, but not limited to, making grocery trips, picking up children from school, assisting children with homework, shopping for clothes, cleaning houses, doing laundry, washing dishes, and preparing meals. Further, Plaintiff and the other class members performed work before and after their scheduled shifts, during meal and rest breaks, and when a shift was cancelled for purported tardiness.

101. During the relevant time period, Plaintiff and the other class members were not compensated at the minimum wage for the time they spent performing job duties off the clock.

102. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

103. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

104. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

105. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 104, and each and every part thereof with the same force and effect as though fully set forth herein.

106. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

///

1 107. During the relevant time period, Plaintiff and the other class members were
2 required to perform job duties off-the-clock, including, but not limited to making grocery trips,
3 picking up children from school, assisting children with homework, shopping for clothes,
4 cleaning houses, doing laundry, washing dishes, and preparing meals.

5 108. During the relevant time period, Plaintiff and the other class members were not
6 compensated at the minimum wage for the time they spent performing job duties off the clock.

7 109. During the relevant time period, Plaintiff and the other class members were not
8 paid overtime wages owed to them for all the time they spent performing job duties off the
9 clock in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8)
10 hours worked on the seventh day of work.

11 110. During the relevant time period, Plaintiff and the other class members' meal
12 periods were missed, short, late, and/or interrupted because Defendant required them to
13 perform work duties, including, but not limited to, making grocery trips, picking up children
14 from school, assisting children with homework, shopping for clothes, cleaning houses, doing
15 laundry, washing dishes, and preparing meals.

16 111. During the relevant time period, Plaintiff and the other class members' rest
17 periods were missed, short, late, and/or interrupted because Defendant required them to perform
18 work duties, including, but not limited to, making grocery trips, picking up children from school,
19 assisting children with homework, shopping for clothes, cleaning houses, doing laundry,
20 washing dishes, and preparing meals.

21 112. During the relevant time period, Plaintiff and the other class members were not
22 paid the full meal period premium for work performed during meal periods, which were due
23 pursuant to California Labor Code section 226.7.

24 113. During the relevant time period, Plaintiff and other class members were not paid
25 the full rest period premium for work performed during rest periods, which were due pursuant
26 to California Labor Code section 226.7.

27 114. As a result, during the relevant time period, Plaintiff and the other class
28 members did not receive all of their wages, earned and unpaid, within seventy-two (72) hours

1 of leaving Defendants' employ.

2 115. During the relevant time period, Defendants intentionally and willfully failed to
3 pay Plaintiff and the other class members who are no longer employed by Defendants their
4 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

5 116. Defendants' failure to pay Plaintiff and the other class members who are no
6 longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72)
7 hours of their leaving Defendants' employ, is in violation of California Labor Code sections
8 201 and 202.

9 117. California Labor Code section 203 provides that if an employer willfully fails to
10 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
11 shall continue as a penalty from the due date thereof at the same rate until paid or until an
12 action is commenced; but the wages shall not continue for more than thirty (30) days.

13 118. Plaintiff and the other class members are entitled to recover from Defendants the
14 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
15 pursuant to California Labor Code section 203.

16 **SIXTH CAUSE OF ACTION**

17 **(Violation of California Labor Code § 226(a))**

18 **(Against CHOICE HOMECARE, INC. and DOES 1 through 100)**

19 119. Plaintiff incorporates by reference the allegations contained in paragraphs 1
20 through 118, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 120. At all material times set forth herein, California Labor Code section 226(a)
23 provides that every employer shall furnish each of his or her employees an accurate itemized
24 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
25 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
26 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
27 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
28 inclusive dates of the period for which the employee is paid, (7) the name of the employee and

his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments 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 or a 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.

121. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members. Because Plaintiff's and the other class members' wage statements did not reflect this information, Plaintiff and the other class members were unable to determine the total amount they were owed, and were unable to verify they were paid the proper amount. In order to determine how much Plaintiff and the other class members would have had to engage in discovery and mathematical computations in order to reconstruct the missing information.

122. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

123. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

124. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

///

///

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

125. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 124, and each and every part thereof with the same force and effect as though fully set forth herein.

126. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

127. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including the use of personal phones and vehicles for business-related purposes.

128. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

129. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

130. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 129, and each and every part thereof with the same force and effect as though fully set forth herein.

131. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure section 1021.5.

2 132. Defendants' activities as alleged herein are violations of California law, and
3 constitute unlawful business acts and practices in violation of California Business &
4 Professions Code section 17200, et seq.

5 133. A violation of California Business & Professions Code section 17200, et seq.
6 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
7 policies and practices of requiring employees, including Plaintiff and the other class members,
8 to work overtime and to report to work without paying them proper compensation violate
9 California Labor Code sections 510 and 1198. Additionally, Defendants' policies and
10 practices of requiring employees, including Plaintiff and the other class members, to work
11 through their meal and rest periods without paying them proper compensation violate
12 California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing
13 to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1.
14 Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the
15 other class members violate California Labor Code sections 201, 202 and 204. Defendants
16 also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

17 134. As a result of the herein described violations of California law, Defendants
18 unlawfully gained an unfair advantage over other businesses.

19 135. Plaintiff and the other class members have been personally injured by
20 Defendants' unlawful business acts and practices as alleged herein, including but not
21 necessarily limited to the loss of money and/or property.

22 136. Pursuant to California Business & Professions Code sections 17200, et seq.,
23 Plaintiff and the other class members are entitled to restitution of the wages withheld and
24 retained by Defendants during a period that commences June 11, 2015 ; an award of attorneys'
25 fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws;
26 and an award of costs.

27 ///

28 ///

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, et seq.)

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

137. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 136, and each and every part thereof with the same force and effect as though fully set forth herein.

138. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

139. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

140. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

141. Defendants’ failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

142. Defendants’ failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

///

Failure to Provide Rest Periods

143. Defendants' failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

144. Defendants' failure to pay minimum wages in violation of the Wage Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197, and 1197.1.

Failure to Pay Reporting Time Pay

145. Defendants' failure to pay reporting time pay in violation of the Wage Orders and by California Labor Code section 1198, as alleged above, constitutes unlawful or unfair activity prohibited by the Wage Orders and by California Labor Code section 1198.

Failure to Timely Pay Wages Upon Termination

146. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

147. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Complete or Accurate Wage Statements

148. Defendants' failure to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

149. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section

1 1174(d).

2 **Failure to Reimburse Necessary Business Expenses**

3 150. Defendants' failure to reimburse all necessary business-related expenses and
4 costs in accordance with California Labor Code sections 2800 and 2802, as alleged above,
5 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800
6 and 2802.

7 151. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
8 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and
9 each of them, business expenses, unpaid wages, and/or untimely wages according to proof,
10 interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as
11 all statutory penalties against Defendants, and each of them, including but not limited to:

- 12 a. Penalties under California Labor Code section 2699 in the amount of a
13 hundred dollars (\$100) for each aggrieved employee per pay period for the
14 initial violation, and two hundred dollars (\$200) for each aggrieved
15 employee per pay period for each subsequent violation;
- 16 b. Penalties under California Code of Regulations Title 8 section 11070 in the
17 amount of fifty dollars (\$50) for each aggrieved employee per pay period
18 for the initial violation, and one hundred dollars (\$100) for each aggrieved
19 employee per pay period for each subsequent violation;
- 20 c. Penalties under California Labor Code section 210 in addition to, and
21 entirely independent and apart from, any other penalty provided in the
22 California Labor Code in the amount of a hundred dollars (\$100) for each
23 aggrieved employee per pay period for the initial violation, and two hundred
24 dollars (\$200) for each aggrieved employee per pay period for each
25 subsequent violation; and
- 26 d. Any and all additional penalties and sums as provided by the California
27 Labor Code and/or other statutes.

28 ///

153. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

Violation of Fair Labor Standards Act, 29 U.S.C. § 207

(Against CHOICE HOMECARE, INC. and DOES 1 through 100)

154. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 153, and each and every part thereof with the same force and effect as though fully set forth herein.

155. The FLSA, 29 U.S.C. § 207(a)(1), provides in relevant part:

Except as otherwise provided in this section, no employer shall employ any of his employees, who in any workweek is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

156. At all material times set forth herein, Plaintiff and the other class members sometimes worked in excess of forty (40) hours in a workweek; however, the proper overtime compensation was not paid by Defendants. As such, Defendants owe Plaintiff and the other class members compensation for work in excess of forty (40) hours in a workweek at an overtime rate.

157. At all material times set forth herein, Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by the FLSA, violated the provisions of the FLSA and was therefore unlawful. Moreover, Defendants'

1 failure to pay Plaintiff and the other class members overtime compensation was and is a result
2 of a uniform policy or practice to deny overtime compensation to them.

3 158. At all material times Defendants' failure to pay Plaintiff and the other class
4 members was the result of Defendants' willful, knowing, and intentional violation of the
5 provisions of the FLSA, or alternatively Defendants' reckless disregard for the requirements of
6 those provisions. At all relevant times set forth, Defendants were aware that their uniform
7 policies and practices are illegal and that Plaintiff and the other class members must be
8 compensated for the work performed in excess of forty (40) hours pursuant to these uniform
9 policies and practices. Therefore, the foregoing Defendants' conduct, as alleged, constitutes
10 willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

11 159. Pursuant to the FLSA, 29 U.S.C. § 216(b), Plaintiff and the other class members
12 are entitled to recover their unpaid overtime compensation as well as liquidated damages equal
13 to the amount of unpaid compensation, interest, costs, and attorneys' fees.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff, individually, and on behalf of other members of the general public similarly
16 situated, and on behalf of other aggrieved employees pursuant to the California Private
17 Attorneys General Act, requests a trial by jury.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
20 public similarly situated, and on behalf of other aggrieved employees pursuant to the
21 California Private Attorneys General Act, prays for relief and judgment against Defendants,
22 jointly and severally, as follows:

23 **Class Certification**

- 24 1. That this action be certified as a class action;
- 25 2. That Plaintiff be appointed as the representative of the Class;
- 26 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 27 4. That Defendants provide to Class Counsel immediately the names and most
28 current/last known contact information (address, e-mail and telephone numbers) of all class

members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

///

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

36. For actual, consequential and incidental losses and damages, according to proof;

37. For statutory penalties pursuant to California Labor Code section 226(e);

38. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For the imposition of civil penalties and/or statutory penalties;

42. For reasonable attorneys' fees and costs of suit incurred herein; and

43. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

44. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

45. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

46. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, et seq.;

47. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

48. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

49. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

50. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f), and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 1454, 2800, and 2802; and

51. For such other and further relief as the Court may deem equitable and appropriate.

///

As to the Tenth Cause of Action

52. For general and unpaid wages at overtime wage rates;

53. For liquidated damages equal to the amount of unpaid compensation;

54. For pre-judgment interest on any unpaid overtime compensation from the date such amounts were due;

55. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to the FLSA, 29 U.S.C. §216(b); and

56. For such other and further relief as the Court may deem appropriate.

Dated: April 6, 2021

LAWYERS for JUSTICE, PC

By: _____



Edwin Aiwanian
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On April 6, 2021, I served the foregoing document(s) described as: **THIRD AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.** on interested parties in this action by Electronic Service as follows:

Robert E. King (info@legallynanny.com)

LEGALLY NANNY

37 Trailwood
Irvine, California 92620

Douglas A. Barritt (dbarritt@barrittsmith.com)

BARRITT SMITH MINER LLP

2601 Main St., Suite 530
Irvine, California 92614

Attorneys for Defendant Choice Homecare, Inc.

[X] BY ELECTRONIC SERVICE

Pursuant to the Court's Order regarding Electronic Service, I caused the documents described above to be E-Served through [Case Anywhere] by electronically mailing a true and correct copy through [Case Anywhere] to the individual(s) listed above.

State of California, Labor & Workforce Development Agency Web URL:
<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

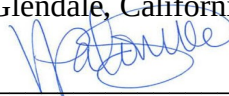
[X] BY ONLINE SUBMISSION

The foregoing documents were transmitted to the California Labor and Workforce Development Agency through the online system established for the submission of notices and documents, in conformity with California Labor Code section 2699(l). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 6, 2021, at Glendale, California.



Valerie Palomo



Valerie Palomo <valerie@calljustice.com>

Order Confirmation for Simpson Ashley v. Choice Homecare Inc., Case # 19STCV20172

1 message

donotreply@legaldocumentserver.mail.legalconnect.com
<donotreply@legaldocumentserver.mail.legalconnect.com>
To: ss@calljustice.com, valerie@lfjpc.com

Tue, Apr 6, 2021 at
2:15 PM

Court Filing and Courtesy Copy Order Confirmation

This confirms Legal Document Server, INC. has received your Court Filing order to file the following document(s):

Third Amended Complaint

At: **Stanley Mosk Central Courthouse**

Your document(s) are scheduled to be reviewed by the Clerk **by (Tue, Apr 6, 2021) 4:15 PM.**

Once your Court Filing order has been reviewed you will receive a status update with details stating if your documents were Accepted, Partially Accepted or Rejected by the Clerk, followed by your conformed or received copy(s) or else rejection notice.

This confirms Legal Document Server, INC. has received your Courtesy Copy Delivery order to deliver the following document(s):

Third Amended Complaint

At: **Spring Street Courthouse**

Your document(s) are scheduled to be reviewed by the Clerk **court day (Wed, Apr 7, 2021) by 10:30 AM.**

Once your Courtesy Copy Delivery order has been delivered you will receive a status update with details stating if your documents were Accepted, Partially Accepted or Rejected by the Clerk, followed by your received or delivered copy(s) or else rejection notice.

Should you have any questions, please [contact us](https://legaldocumentserver.com/) or log in and manage your cases and orders at <https://legaldocumentserver.com/>

Thank you for using Legal Document Server, INC..

Order(s): **4427519-01, 4427519-02**

Billing Code: **14416**

This automated message is being sent by Legal Document Server, INC. It is intended exclusively for the individuals and/or entities to which it is addressed. This communication including any links or attachments, may contain information that is proprietary, confidential, privileged or otherwise exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate any part of this message, or any part of any links or attachments thereto. If you have received this message in error, please notify the sender immediately by email and delete all copies of the message and attachments from your records.

© 2021 Legal Document Server, INC. All Rights Reserved.
[7162 Beverly Blvd Suite 508, Los Angeles, CA 90036](#)
[Contact Us](#)

Document Upload Confirmation - Simpson, et al. v. Choice Homecare, Inc., Case No. 19STCV20172

You have successfully uploaded the following document through Case Anywhere:

Document Uploaded By: Lawyers for Justice, PC

Number of Documents in Transaction: 1

Representing: Ashley Simpson, individually, and on behalf of other members of the general public similarly situated

Upload Date: 4/6/21

Time of Upload: 2:18 PM (PDT)

Document Title: THIRD AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.

Page Range: 31 -99

An email notification has been sent to the following individuals included on the Case Anywhere Electronic Service List:

Barritt Smith Miner LLP: Douglas Barritt, Esq. (dbarritt@barrittsmith.com)

Lawyers for Justice, PC: Arby Aiwasian, Esq. (arby@calljustice.com); Edwin Aiwasian, Esq. (edwin@calljustice.com)

Legally Nanny: Robert King, Esq. (info@legallynanny.com)

Other authorized users may also receive email notification of this record.