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9 LEONORA MANUEL

FILED BY FAX

ALAMEDA COUNTY

December 09, 2020

CLERK OF
THE SUPERIOR COURT
By Nicolle Hall, Deputy

CASE NUMBER:

RG20082303

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

10 LEONORA MANUEL,

11 Plaintiff,

12 v.

13 AI HEALTH CARE, INC.; AMARPREET
14 SANDHU; SEEMA SANDHU, and DOES
1 TO 100

15 Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

1. FAILURE TO PAY OVERTIME WAGES;
2. LIQUIDATED DAMAGES UNDER LABOR
CODE §1194.2;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST BREAKS;
5. FAILURE TO PAY WAGES UNDER LABOR
CODE §210;
6. FAILURE TO PROVIDE PROPER ITEMIZED
WAGE STATEMENTS;
7. WAITING TIME PENALTIES;
8. UNLAWFUL BUSINESS PRACTICES IN
VIOLATION BUS. AND PROF. CODE
§17200;
9. PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

1 Plaintiff alleges:

2 **PARTIES AND COMMON ALLEGATIONS**

3 1. Plaintiff LEONORA MANUEL is an adult individual.

4 2. Defendant AMARPREET SANDHU is an adult individual.

5 3. Defendant SEEMA SANDHU is an adult individual.

6 4. Plaintiff is informed and believe and thereon alleges that Defendants AMARPREET
7 SANDHU and SEEMA SANDHU reside in the County of Alameda.

8 5. Plaintiff is informed and believes and thereon alleges that he was employed by defendants
9 A1 HEALTH CARE, INC.; AMARPREET SANDHU; SEEMA SANDHU, and DOES 1 to 100 as a
10 caregiver at residential care facilities for the elderly in the City of Walnut Creek, County of Contra
11 Costa.

12 6. Plaintiff is informed and believes and thereon alleges that the residential care facilities for the
13 elderly are owned, managed and/or operated by defendants A1 HEALTH CARE, INC.;
14 AMARPREET SANDHU; SEEMA SANDHU and DOES 1 to 100.

15 7. Plaintiff is informed and believes and thereon alleges that the California Department of
16 Social Services, Community Care Licensing issued licenses to defendant A1 HEALTH CARE, INC.
17 to manage, and/or operate the residential care facilities for the elderly.

18 8. Plaintiff is informed and believes and thereon alleges that defendant A1 HEALTH CARE,
19 INC. was and is a corporation registered to transact business in California, with principal business
20 and executive offices in the County of Alameda.

21 9. Plaintiff is informed and believes and thereon alleges that defendant AMARPREET
22 SANDHU and SEEMA SANDHU are owners, directors, officers and/or managing agents of
23 defendant A1 HEALTH CARE, INC.

24 10. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 to
25 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend
26 this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
27

believes and thereon alleges that each of these fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by the aforementioned defendants.

11. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned defendants were employers within the meaning of wage and hour laws including but not limited to California Labor Code §§558.1, 1194 and Wage Orders of the Industrial Welfare Commission and codified in the applicable regulations.

12. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned each of the defendants was the agent, employee, partner and/or representative of each of the remaining defendants and, in doing the things hereinafter alleged, was acting within the course and scope of such agency and employment. Plaintiff is further informed and believes, and thereon alleges, that each of the defendants herein gave consent to, ratified, and authorized the acts alleged herein to each of the remaining defendants.

13. Plaintiff is informed and believes and thereon alleges that if defendants DOES 1 to 100 were not agents, employees, partners, and/or representatives acting within the course of their relationship with the named defendants, said defendants DOES 1 to 100 were acting in their independent capacity as individual defendants.

FIRST CAUSE OF ACTION

BY PLAINTIFF AGAINST ALL DEFENDANTS FOR FAILURE TO PAY OVERTIME WAGES

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

15. Labor Code §515(d)(2) states, "Payment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee's regular, nonovertime hours, notwithstanding any private agreement to the contrary." All references or citations to the Labor Code are references or citations to the California Labor Code unless otherwise stated.

1 16. Plaintiff was paid a fixed daily rate of between \$80.00 to \$110.00.

2 17. Plaintiff was employed by defendants from about October 1, 2017 to about July 31, 2020.
3 Plaintiff worked generally at least five days per week, 24 hours per day.

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

9 19. Labor Code §1198 provides that the employment of any employee for longer hours than
10 those fixed by the applicable wage order or under conditions of labor prohibited by the wage order is
11 unlawful.

12 20. Industrial Welfare Commission Wage Order No. 5-2001, which regulates the wages, hours
13 and working conditions of employees working in the “Public Housekeeping Industry,” was
14 applicable to and controlled Plaintiff’s employment with defendants.

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

22 22. Labor Code §206.5 states, “(a) An employer shall not require the execution of a release of a
23 claim or right on account of wages due, or to become due, or made as an advance on wages to be
24 earned, unless payment of those wages has been made. A release required or executed in violation of
25 the provisions of this section shall be null and void as between the employer and the employee.
26 Violation of this section by the employer is a misdemeanor. (b) For purposes of this section,
27

1 execution of a release includes requiring an employee, as a condition of being paid, to execute a
2 statement of the hours he or she worked during a pay period which the employer knows to be false.”

3 23. Defendants failed to pay Plaintiff overtime premium during the claim period.

4 24. Pursuant to Labor Code §§1194(a), 1194.2(a), 2802(b), and Civil Code §§3287(a) and
5 3289(b), and for the three year period immediately preceding the filing of her complaint, Plaintiff
6 requests interest at the legal rate of 10 percent per annum on all unpaid wages from the date such
7 wages were due until payment.

8 25. Plaintiff has incurred and will continue to incur expenses for attorney’s fees and costs in
9 prosecuting this action. Pursuant to Labor Code §1194(a), Plaintiffs request an award of reasonable
10 attorney’s fees and costs.

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

12 **SECOND CAUSE OF ACTION**

13 **BY PLAINTIFF AGAINST ALL DEFENDANTS FOR LIQUIDATED DAMAGES UNDER**
14 **LABOR CODE §1194.2**

15 26. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-25
16 of this complaint.

17 27. Labor Code §1197 states, “The minimum wage for employees fixed by the commission or by
18 any applicable state or local law, is the minimum wage to be paid to employees, and the payment of
19 a lower wage than the minimum so fixed is unlawful. This section does not change the applicability
20 of local minimum wage laws to any entity.”

21 28. Labor Code §1194.2(a) provides, “In any action under Section 98, 1193.6, 1194, or 1197.1 to
22 recover wages because of the payment of a wage less than the minimum wage fixed by an order of
23 the commission or by statute, an employee shall be entitled to recover liquidated damages in an
24 amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall
25 be construed to authorize the recovery of liquidated damages for failure to pay overtime
26 compensation.”

1 29. Plaintiff was not compensated at all, not even the minimum wage, for any hours worked over
2 eight hours per day or over 40 hours per week. Plaintiff is therefore owed liquidated damages in an
3 amount according to proof plus interest thereon.

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

5 **THIRD CAUSE OF ACTION**
6 **BY PLAINTIFF AGAINST ALL DEFENDANTS**
7 **FOR FAILURE TO PROVIDE MEAL PERIODS**

8 30. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-29
9 of this complaint.

10 31. Labor Code §226.7 provides, “(a) No employer shall require any employee to work during
11 any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b)
12 If an employer fails to provide an employee a meal period or rest period in accordance with an
13 applicable order of the Industrial Welfare Commission, the employer shall pay the employee one
14 additional hour of pay at the employee s regular rate of compensation for each work day that the
15 meal or rest period is not provided.”

16 32. Labor Code §512(a) and ¶11 of Title 8, §11050 of the California Code of Regulations, make
17 it unlawful for an employer to employ an employee for a work period of more than five hours per
18 day without providing the employee with a meal period of not less than 30 minutes. Section 512(a)
19 makes it further unlawful for an employer to employ an employee for a work period of more than 10
20 hours per day without providing the employee with a second meal period of not less than 30 minutes,
21 unless the total hours worked is no more than 12 hours, in which case the second meal period may be
22 waived, but only by mutual consent of the employer and the employee and only if the first meal
23 period was not waived.

24 33. Defendants failed to provide to Plaintiff during the relevant claim period and in violation of
25 Labor Code §§226.7 and 512 and the applicable wage order, uninterrupted meal periods when
26 Plaintiff was relieved of all duties.

34. Defendants are liable to Plaintiff for the meal period premiums in an amount according to proof.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

FOURTH CAUSE OF ACTION

BY PLAINTIFF AGAINST ALL DEFENDANTS

FOR FAILURE TO PROVIDE REST PERIODS

35. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-34 of this complaint.

36. Section 226.7(a) of the Labor Code makes it unlawful for an employer to require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. The applicable wage order codified in Paragraph 12 of Title 8, § 11050 of the California Code of Regulations requires every employer to authorize and permit employees to take rest periods of 10 minutes net rest time for every four hours of work or major fraction thereof. If an employer fails to provide an employee with an uninterrupted meal period or authorize and permit a rest period, the employer must pay the employee one hour of compensation at the employee's regular rate of pay for each workday that the meal or rest period was not provided.

37. Defendants failed to provide to Plaintiff during the relevant claim period and in violation of Labor Code §§226.7 and the applicable wage order, uninterrupted rest periods when Plaintiff was relieved of all duties.

38. Defendants are liable to Plaintiff for the rest period premiums in an amount according to proof.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

FIFTH CAUSE OF ACTION

**BY PLAINTIFF AGAINST ALL DEFENDANTS FOR FAILURE TO PAY WAGES UNDER
LABOR CODE §210**

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

1 40. Section 210 of the Labor Code states, "In addition to, and entirely independent and apart
2 from, any other penalty provided in this article, every person who fails to pay the wages of each
3 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
4 shall be subject to a penalty as follows. (1) For any initial violation, one hundred dollars (\$100) for
5 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
6 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
7 amount unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory
8 penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance
9 of a citation or pursuant to Section 98.3. The procedures for issuing, contesting, and enforcing
10 judgments for citations issued by the Labor Commissioner under this section shall be the same as
11 those set forth in subdivisions (b) through (k), inclusive, of Section 1197.1."

12 41. Plaintiff was paid semimonthly. Defendants failed to pay Plaintiff all of her wages due in
13 violation of Labor Code §210.

14 42. Defendants are liable to Plaintiff for the statutory penalty in an amount according to proof.
15 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

16 **SIXTH CAUSE OF ACTION**

17 **BY PLAINTIFF AGAINST ALL DEFENDANTS FOR FAILURE TO PROVIDE PROPER**
18 **ITEMIZED WAGE STATEMENTS**

19 43. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-42
20 of this complaint.

21 44. Throughout her employment relationship, and in violation of Labor Code §226(a),
22 defendants failed to provide Plaintiff with accurate itemized written statements showing the
23 following: gross and net wages earned; total hours worked; all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each rate; the inclusive
25 dates of the period for which the employee is paid; and all deductions. These itemized wage
26 statements are required to be kept on file by the employer for at least three years at the place of
27 employment.

1 45. As a result of defendants' failure to provide the required wage statements, Plaintiff is deemed
2 to have suffered injury pursuant to Labor Code §226(e).

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

9 47. Plaintiff was paid semimonthly and is entitled to additional Labor Code §226 damages in the
10 amount according to proof.

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

12 **SEVENTH CAUSE OF ACTION**

13 **BY PLAINTIFF AGAINST ALL DEFENDANTS FOR WAITING TIME PENALTIES**

14 48. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-47
15 of this complaint.

16 49. Labor Code §203 provides, "If an employer willfully fails to pay, without abatement or
17 reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an
18 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
19 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the
20 wages shall not continue for more than 30 days. An employee who secretes or absents himself or
21 herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to
22 him or her, including any penalty then accrued under this section, is not entitled to any benefit under
23 this section for the time during which he or she so avoids payment."

24 50. Defendants failed to pay Plaintiffs' wages as set forth above. Plaintiffs are therefore entitled
25 to waiting time penalties under Labor Code §203 in the amount according to proof.

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

27 **EIGHTH CAUSE OF ACTION**

28 **BY PLAINTIFF AGAINST ALL DEFENDANTS FOR UNLAWFUL BUSINESS**

1 **PRACTICES**

2 51. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-50
3 of this complaint.

4 52. Such actions are unfair, unlawful or fraudulent in violation of California Business and
5 Professions Code §17200 et al.

6 53. Plaintiff seeks full restitution of monies according to proof, to restore any and all monies
7 withheld, acquired and/or converted by the defendants by means of the unfair practices complained
8 of herein, and other injunctive and other relief allowed by law.

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

10 **NINTH CAUSE OF ACTION**

11 **BY PLAINTIFF AGAINST ALL DEFENDANTS FOR PRIVATE ATTORNEYS GENERAL**
12 **ACT PENALTIES**

13 54. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-53
14 of this complaint.

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

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

25 57. As set forth above, Defendants have committed numerous violations for which the Labor
26 Code provides for penalties, including violations of §§203, 206.5, 226, 226.7, 510, 512, 1174, 1194,
27 1197.

1 58. On or about August 3, 2020, Plaintiff provided written notice by online filing to the Labor &
2 Workforce Redevelopment Agency ("LWDA") and to defendants by certified mail of the legal
3 claims and theories of this case. A true and correct copy of the notice is hereto attached as Exhibit A.

4 59. Plaintiff has not received notice from LWDA within 65 calendar days of the postmark date of
5 Plaintiff's August 3, 2020 notice.

6 60. As a direct result of Defendants' conduct as described, Plaintiff is entitled to recover from
7 Defendants, on his own behalf and on behalf of others similarly situated, the maximum civil
8 penalties permitted by the Private Attorneys General Act, including penalties under Labor Code
9 §§226.3, and for all violations of Labor Code §§203, 206.5, 226, 226.7, 510, 512, 1174, 1194, 1197,
10 as well as reasonable attorney's fees and costs.

11 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

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

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

15 3. For penalties under Labor Code §2698 et seq., including penalties under Labor Code
16 §§226.3.

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

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

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

23 7. For interest as permitted by law, including but not limited to Labor Code §§1194, 1194.2,
24 1197.1, and Civil Code §§3287 and 3289.

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

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DATED: December 8, 2020


Allen A. Villanueva

Allan A. Villanueva
Attorney for Plaintiff

EXHIBIT A

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MEMBER OF THE BARS
CALIFORNIA, TEXAS AND HAWAII

VIA CERTIFIED MAIL

July 3, 2020

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

Seema Sandhu
9701 Sara Ann Court
Dublin, CA 94568

Amarpreet Sandhu
9701 Sara Ann Court
Dublin, CA 94568

A1 Health Care, Inc.
c/o Seema Sandhu
9701 Sara Ann Court
Dublin, CA 94568

RE: *LEONORA MANUEL v. SEEMA SANDHU; AMARPREET SANDHU; A1 HEALTH CARE, INC.*

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

To Whom It May Concern:

This office represents ***LEONORA MANUEL***. Please direct all communications to this office.

She is an aggrieved employee and is making claims under Cal. Labor Code §2698 et seq. (Private Attorneys General Act of 2004 or “PAGA”) on her behalf and other current or former aggrieved employees (collectively “aggrieved employees”) of Defendants SEEMA SANDHU, AMARPREET SANDHU and A1 HEALTH CARE, INC.

The aggrieved employees are caregivers who were assigned to work at different residential care facilities for the elderly (RCFE) licensed by the State of California, Division of Community Care Licensing. Defendants own, administer, manage, and operate these residential care facilities for the elderly where the aggrieved employees worked. Defendants own, administer, manage, and operate at least 5 RCFEs.

Defendants are employers under IWC Wage Order 16, *Martinez v. Combs* (2010) 49 Cal.4th 35 and under *Turman v. Superior Court of Orange Cnty.* (2017) 17 Cal.App.5th 969. Further Seema Sandhu and Amarpreet Sandhu are alter egos of A1 Health Care, Inc. Seema Sandhu and Amarpreet Sandhu are also employers under Cal. Labor Code §558.1, which provides:

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

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

Complainant is informed and believes that both natural persons Seema Sandhu and Amarpreet Sandhu are owners, directors, officers, or managing agents of A1 Health Care, Inc. Therefore, Seema Sandhu and Amarpreet Sandhu are both employers. Cal. Labor Code §558.1.

Cal. Labor Code §§510, 515, 1194; IWC Wage Order 5, ¶3 and ¶4; 8 CCR 11050, ¶3 and ¶4

Defendants paid the aggrieved employees a fixed daily rate, which only compensated for the employees' regular, nonovertime hours.

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

Labor Code §515 states, "(d) (1) For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary.

(2) Payment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee's regular, nonovertime hours, notwithstanding any private agreement to the contrary."

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

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

The aggrieved employees worked more than 8 hours per day up to 24-hours per day. They were required to be on-call, on the premises or so close thereto that they could not use the time effectively for their own purposes. They were not allowed to leave the facilities as they needed to monitor, supervise and attend to the needs of the residents 24 hours per day. The aggrieved employees were not paid for hours worked over eight hours per day or over 40 hours per week.

In sum, the employers and those acting on their behalves violated Cal. Labor Code §§510, 515, 1194 and IWC Wage Order 5, ¶3 and ¶4; 8 CCR 11050, ¶3 and ¶4.

Cal. Labor Code §1197.1, §1194.2

Based on the same facts set forth above, the employers or other person acting individually or as an officer, agent or employee paid or caused to be paid a wage less than the minimum fixed by an order of the commission. The employees were not paid for any hours worked over eight per day or over 40 per week. Therefore, the aggrieved employees seek penalties as set forth in the Labor Code as follows.

Cal. Labor Code §1197.1 provides:

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

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

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

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

Cal. Labor Code §1194.2(a) provides:

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

Since defendants paid a fixed daily rate to the aggrieved employees and such fixed rate only compensates for the employee's regular, nonovertime hours, then defendants did not pay employees for any of the hours worked over 8 hours per day or over 40 hours per week. Thus, they caused to be paid to the aggrieved employees a wage less than the minimum fixed by an applicable state or local law.

Cal. Labor Code §§226.7, 512; IWC Wage Order 5, ¶¶11-12; 8 CCR 11050, ¶¶11-12.

Labor Code §226.7 states, "(a) As used in this section, "recovery period" means a cooldown period afforded an employee to prevent heat illness.

"(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

"(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

Labor Code §512 provides, "(a) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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."

The aggrieved employees are not provided meal and rest breaks in accordance with the law. They are not provided with meal breaks wherein the employers relieve its

employees of all duty, relinquish control over their activities and permit them a reasonable opportunity to take an uninterrupted 30 minute break and do not impede or discourage them from doing so. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038–1039.

During required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time. *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257, 260 (citing *Brinker*).

The aggrieved employees work in excess of ten (10) hours per day but they are not provided a second meal break wherein they are relieved of all duty.

The aggrieved employees work(ed) through their meal breaks and rest breaks, monitoring, supervising and attending to the residents.

Thus, Defendants violated Labor Code §§226.7 and 512 and IWC Wage Order 5, ¶¶11-12; 8 CCR 11050, ¶¶11-12.

Cal. Labor Code §226, 246(i) and Labor Code §1174

The employers and those acting on their behalf do not provide accurate paystubs required by Cal. Labor Code §226, which requires, among others information, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. They also violated Labor Code §246(i) for failure to “provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use.”

First, many of the aggrieved employees are paid “cash, under-the-table.” They are not given any wage statements / paystubs at all.

Second, to the extent that some of them are provided paystubs, the paystubs do not accurately reflect the hours worked and rates of pay, and paid sick leave available.

Further, the employers do not keep payroll records pursuant to Labor Code §1174 showing the hours worked daily and the wages paid to the employees.

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

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

Very truly yours,



Allan A. Villanueva