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8 Attorneys for Plaintiff,
9 JASMINE BROWN, and all others similarly situated

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12 (UNLIMITED JURISDICTION)

13 JASMINE BROWN, on behalf of herself, all
14 others similarly situated, and as an "aggrieved
15 employee" on behalf of other "aggrieved
employees" under the Labor Code Private
Attorney General Act of 2004,

16 Plaintiff(s),

17 vs.

18 BQ OPERATIONS HOLDING, LLC, a
19 Delaware limited liability company;
20 SUNBRIDGE HALLMARK HEALTH
SERVICES, LLC, a Delaware limited liability
21 company doing business in California as Playa
Del Rey Center; FOUNTAIN VIEW
22 SUBACUTE AND NURSING CENTER, LLC,
23 a Delaware limited liability company doing
business in California as Fountain View
24 Subacute and Nsg; GENESIS HEALTHCARE,
a business entity of unknown form; GENESIS
25 HEALTHCARE, INC., a business entity of
unknown form; GHC PAYROLL, LLC, a
26 business entity of unknown form; and DOES 1-
27 50, inclusive,

28 Defendants.

FILED
Superior Court of California
County of Los Angeles

AUG 26 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By Dejane Wortham, Deputy

Case No.: 21STCV 04069

CLASS ACTION

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, JASMINE BROWN (hereafter "Plaintiff"), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against Defendants BQ
5 OPERATIONS HOLDING, LLC, SUNBRIDGE HALLMARK HEALTH SERVICES, LLC,
6 FOUNTAIN VIEW SUBACUTE AND NURSING CENTER, LLC, GENESIS HEALTHCARE,
7 GENESIS HEALTHCARE, INC., GHC PAYROLL, LLC, and Does 1-50, inclusive (collectively
8 "Defendants") for alleged violations of the California Labor Code, Industrial Welfare
9 Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
11 and other similarly situated current and former employees in California for unpaid wages and
12 other related relief. These claims are based on Defendants' alleged failures to (1) provide all meal
13 and rest periods in compliance with California law, (2) pay all wages earned for all hours worked
14 at the correct rates of pay, (3) indemnify Plaintiff and the below-described class for reasonable
15 expenses incurred while performing their duties, (4) provide accurate and complete itemized
16 written wage statements, (5) timely pay all final wages upon termination of employment, and (6)
17 fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief
18 through this class action.

18 PARTIES

19 3. Plaintiff JASMINE BROWN is a resident of California.

20 4. On or about February 11, 2019, Defendants first employed Plaintiff to work in
21 California as a certified nursing assistant ("CNA") and restorative nursing assistant ("RNA") at
22 the Fountain View Subacute and Nsg skilled nursing and rehabilitation center located in Los
23 Angeles, California (hereafter referred to as "Fountain View Center"). Defendants transferred
24 Plaintiff to a second facility they own and operate located in Playa Del Ray, California (hereafter
25 referred to as "Playa Del Rey Center") on or about April 20, 2020. Defendants continuously
26 employed Plaintiff from her hire date until approximately May 28, 2020.

27 5. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
28 California Code of Regulations § 11050 and an "aggrieved employee" within the meaning of
Labor Code § 2699(c).

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1 6. Defendant BQ OPERATIONS HOLDING, LLC, is a limited liability company
2 organized and existing under the laws of Delaware and also a citizen of California based on
3 Plaintiff's information and belief.

4 7. Defendant SUNBRIDGE HALLMARK HEALTH SERVICES, LLC, is a limited
5 liability company organized and existing under the laws of Delaware and also a citizen of
6 California based on Plaintiff's information and belief. SUNBRIDGE HALLMARK HEALTH
7 SERVICES, LLC is doing business in California as Playa Del Rey Center.

8 8. Defendant FOUNTAIN VIEW SUBACUTE AND NURSING CENTER, LLC, is
9 a limited liability company organized and existing under the laws of Delaware and also a citizen
10 of California based on Plaintiff's information and belief. FOUNTAIN VIEW SUBACUTE AND
11 NURSING CENTER, LLC is doing business in California as Fountain View Subacute and Nsg.

12 9. Defendant GENESIS HEALTHCARE is a business entity of unknown form and a
13 citizen of California based on Plaintiff's information and belief.

14 10. Defendant GENESIS HEALTHCARE, INC., is a business entity of unknown form
15 and a citizen of California based on Plaintiff's information and belief.

16 11. Defendant GHC PAYROLL, LLC, is a business entity of unknown form and a
17 citizen of California based on Plaintiff's information and belief.

18 12. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
19 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
20 is informed and believes and thereon alleges that said Defendants are legally responsible for the
21 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
22 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
23 when ascertained.

24 13. Plaintiff is informed and believes and thereon alleges that, at all relevant times
25 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
26 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
27 and scope of such agency or employment and with the approval and ratification of each of the
28 other Defendants.

 14. At all relevant times, in perpetrating the acts and omissions alleged herein,
Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-

described class in accordance with applicable laws as alleged herein.

15. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

16. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

17. **Class Definition:** The Class is defined as follows: All individuals Defendants employed at their Playa Del Rey Center and/or Fountain View Center as non-exempt, hourly employees including, but not limited to, CNAs and RNAs and persons in comparable positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action ("Class" or "Class Members").

18. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the Class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

19. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

20. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class with all meal and rest periods in compliance with California law;

B. Whether Defendants failed to pay the Class for all wages earned for all hours worked at the correct rates of pay;

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1 C. Whether Defendants failed to indemnify the Class Members for the
2 reasonable expenses they incurred during the course of performing their duties;

3 D. Whether Defendants knowingly and intentionally failed to provide the
4 Class with accurate written wage statements;

5 E. Whether Defendants willfully failed to provide the Class with timely final
6 wages upon termination of employment;

7 F. Whether Defendants engaged in unfair competition within the meaning of
8 Business and Professions Code sections 17200, et seq., with respect to the Class; and

9 G. Whether Class Members are entitled to restitution of money or property
10 that Defendants may have acquired from them through alleged Labor Code violations.

11 21. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
12 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
13 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
14 Code, the Wage Order, and the Business and Professions Code.

15 22. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
16 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
17 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
18 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
19 Members.

20 23. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
21 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
22 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
23 Plaintiff and absent Class Members.

24 24. **Superiority:** A class action is vastly superior to other available means for fair and
25 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
26 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
27 and efficiently prosecute their common claims in a single forum without the unnecessary
28 duplication of effort and expense that numerous individual actions would entail. In addition, the
monetary amounts due to many individual Class Members are likely to be relatively small and
would thus make it difficult, if not impossible, for individual Class Members to both seek and
obtain relief. Moreover, a class action will serve an important public interest by permitting Class

Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

25. On or about February 11, 2019, Defendants first employed Plaintiff to work in California as a CNA and RNA at their Fountain View Center located in Los Angeles, California. Defendants transferred Plaintiff to a second facility they own and operate located in Playa Del Ray, California on or about April 20, 2020. Defendants continuously employed Plaintiff from her hire date until approximately May 28, 2020.

26. At all relevant times, Defendants compensated Plaintiff and the Class Members with an hourly rate of pay and issued their wages on a bi-weekly basis.

27. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely, duty-free rest and meal periods as provided under California law. Defendants often understaffed Plaintiff and the Class Members' job sites and as a result of their workload Plaintiff and the Class Members had no choice but to take late meal and/or rest periods or miss them all together to meet Defendants' expectations. Additionally, Defendants prohibited Plaintiff and the Class Members from leaving their job sites and required them to stay within the premises during their rest breaks. Defendants failed to pay premium wages for day on which they failed to provide Plaintiff and the Class Members with rest and/or meal periods as provided by California law.

28. Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Defendants required Plaintiff and the Class Members to work off-the-clock without compensation. During the COVID-19 pandemic, Defendants required Plaintiff and the Class Members to go through a temperature-check process and fill out a questionnaire before clocking in at the beginning of their shifts and without pay. This process took approximately five (5) minutes to complete.

29. While Defendants did not list fluency in language other than English as a job requirement at time of hire, Defendants expected Plaintiff and the Class Members to interpret and act upon patient communications in languages other than English, including Spanish and Tagalog. However, they failed to provide Plaintiff and the Class Members with interpreters to communicate with non-English speaking patients. This compelled Plaintiff and the Class Members to use translation apps on their personal cellphones to interpret communications with their patients.

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1 Defendants, which were at all times aware of this practice, failed to reimburse Plaintiff and the
2 Class Members for such business expenses during or after their employment ended.

3 30. At all relevant times, Defendants knowingly and intentionally failed to provide
4 Plaintiff and the Class Members with accurate wage statements itemizing each Class Member's
5 gross wages earned, net wages earned, total hours worked, corresponding number of hours
6 worked at each rate by the Class Members and other requirements of California Labor Code
7 Section 226. Defendants also failed to state the correct name and address of the business entity
8 that employed Plaintiff and the Class Members.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **(Lab. Code §§ 226.7, 512, and 1198)**

12 **(By Plaintiff and the Class against all Defendants)**

13 31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 32. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class have been employees of Defendants and entitled to the benefits and protections of
16 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

17 33. Labor Code § 1198 states,

18 "The maximum hours of work and the standard conditions of labor fixed
19 by the commission shall be the maximum hours of work and the standard
20 conditions of labor for employees. The employment of any employee for
21 longer hours than those fixed by the order or under conditions of labor
22 prohibited by the order is unlawful."

23 34. In relevant part, Labor Code Section 512 states

24 "An employer may not employ an employee for a work period of more than
25 five hours per day without providing the employee with a meal period of
26 not less than 30 minutes, except that if the total work period per day of the
27 employee is no more than six hours, the meal period may be waived by
28 mutual consent of both the employer and employee. An employer may 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."

35. In relevant part, Section 11 of the Wage Order states:

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Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- ...
- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

36. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations (29 C.F.R. § 778.223):

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter

(interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

37. 29 C.F.R. § 785.7 states:

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.

38. 29 C.F.R. § 785.18 states:

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

39. 29 C.F.R. § 785.19 states:

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office

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1 employee who is required to eat at his desk or a factory worker who is
2 required to be at his machine is working while eating. *Culkin v. Glenn L.*
3 *Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d
4 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock*
5 *& Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A.
6 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187
7 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3
8 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton*
9 *v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para.
10 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert.
11 denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases
12 para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz*
13 *Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

14 40. Healthcare employees who were required to wear pagers and respond to patient
15 emergencies during meal breaks were held entitled to payment from their employer for meal
16 breaks because their employer had not fully relieved them of their responsibilities during those
17 times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); *see*
18 *also Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016)
19 (employees required to work during half hour meal break given that they had to stay at the facility
and be available to respond to requests to return or check out weapons and equipment); *Wahl v.*
Wichita, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police
officers stated a claim under the Fair Labor Standards Act where they alleged that they were not
paid for meal periods but were required to remain within a certain area, respond to emergencies
and citizen requests, and remain accessible).

20 41. Wage Order 5, § 11(D) states:

21
22 Notwithstanding any other provision of this order, employees in the health
23 care industry who work shifts in excess of eight (8) total hours in a
24 workday may voluntarily waive their right to one of their two meal periods.
25 In order to be valid, any such waiver must be documented in a written
26 agreement that is voluntarily signed by both the employee and the
27 employer. The employee may revoke the waiver at any time by providing
the employer at least one day's written notice. The employee shall be fully
compensated for all working time, including any on-the-job meal period,
while such a waiver is in effect.

28 42. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the

1 Class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for
2 each day they worked five or more hours. Pursuant to California Labor Code § 512, they were
3 also entitled to a second 30-minute meal period when they worked more than ten (10) hours in
4 a workday.

5 43. During the relevant time period, Defendants failed to provide Plaintiff and the
6 Class Members with timely, off-duty meal periods in accordance with California Labor Code §
7 512 and the Wage Order. Defendants failed to hire sufficient staff members to cover Plaintiff
8 and the Class Members so they could take duty-free 30-minute meal periods.

9 44. Plaintiff is informed and believes and thereon alleges that, at relevant times
10 within the applicable limitations period, Defendants maintained a policy, practice, or a lack of
11 a policy which resulted in Defendants not providing Plaintiff and the Class with all timely meal
12 periods required by California Labor Code § 512 and the Wage Order.

13 45. Defendants failed to pay Plaintiff the additional wages required by California
14 Labor Code § 226.7 for all meal periods not provided to her. Plaintiff is informed and believes
15 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
16 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
17 providing the class with additional wages for all meal periods not provided to them as required
18 by California Labor Code § 226.7.

19 46. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered
20 damages in amounts subject to proof to the extent they were not paid additional wages owed for
21 all meal periods not provided to them.

22 47. By reason of the above, Plaintiff and the members of the class are entitled to
23 premium wages for workdays in which one or more meal periods were not provided to them
24 pursuant to California Labor Code § 226.7.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PROVIDE REST BREAKS**

27 **(Lab. Code §§ 226.7 and 1198)**

28 **(By Plaintiff and the Class against all Defendants)**

48. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

49. At all relevant times during the applicable limitations period, Plaintiff and the
Class have been employees of Defendants and entitled to the benefits and protections of

1 California Labor Code §§ 226.7, 1198, and the Wage Order.

2 50. Labor Code § 1198 states,

3 “The maximum hours of work and the standard conditions of labor fixed
4 by the commission shall be the maximum hours of work and the standard
5 conditions of labor for employees. The employment of any employee for
6 longer hours than those fixed by the order or under conditions of labor
7 prohibited by the order is unlawful.”

8 51. In relevant part, Section 12 of the Wage Order states:
9 Rest Periods:

10 (A) Every employer shall authorize and permit all employees
11 to take rest periods, which insofar as practicable shall be in the
12 middle of each work period. The authorized rest period time shall
13 be based on the total hours worked daily at the rate often (10)
14 minutes net rest time per four (4) hours or major fraction thereof.
15 However, a rest period need not be authorized for employees
16 whose total daily work time is less than three and one-half (3 1/2)
17 hours. Authorized rest period time shall be counted as hours
18 worked for which there shall be no deduction from wages.

19 (B) If an employer fails to provide an employee a rest period
20 in accordance with the applicable provisions of this Order, the
21 employer shall pay the employee one (1) hour of pay at the
22 employee’s regular rate of compensation for each work day that
23 the rest period is not provided.

24 52. In addition, Labor Code Section 226.7 states

25 (b) An employer shall not require an employee to work during a meal
26 or rest or recovery period mandated pursuant to an applicable statute, or
27 applicable regulation, standard, or order of the Industrial Welfare
28 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.

53. Pursuant to the Wage Order, Plaintiff and the Class were entitled to be provided

1 with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction
2 thereof.

3 54. Defendants failed to provide Plaintiff with all required rest breaks in accordance
4 with the Wage Order.

5 55. Defendants failed to pay Plaintiff the additional wages required by California
6 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes
7 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
8 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
9 providing the class with additional wages for all rest breaks not provided to them as required by
10 California Labor Code § 226.7.

11 56. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered
12 damages in amounts subject to proof to the extent they were not paid additional wages owed for
13 all rest breaks not provided to them.

14 57. By reason of the above, Plaintiff and the members of the class are entitled to
15 premium wages for workdays in which one or more rest breaks were not provided to them
16 pursuant to California Labor Code § 226.7.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE
19 CORRECT RATES OF PAY**

20 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

21 **(By Plaintiff and the Class against all Defendants)**

22 58. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

23 59. At all relevant times, Plaintiff and the Class Members have been employees of
24 Defendants and entitled to the benefits and protections of the California Labor Code sections 510,
25 1194, 1197, and 1198 and the Wage Order.

26 60. Section 4 of Wage Order states,

27 "Every employer shall pay to each employee, on the established payday for the
28 period involved, not less than the applicable minimum wage for all hours worked
in the payroll period, whether the remuneration is measured by time, piece,
commission, or otherwise."

61. In relevant part, Section 2 of the Wage Order states,

"Hours worked" means the time during which an employee is subject to the control

of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

62. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

63. Labor Code section 510 states:

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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

64. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA").

1 Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is
2 defined by federal regulations:

3 ...As a general rule the term “hours worked” will include: (a) All time
4 during which an employee is required to be on duty or to be on the
5 employer’s premises or at a prescribed workplace and (b) all time during
6 which an employee is suffered or permitted to work whether or not he is
7 required to do so. Thus, working time is not limited to the hours spent in
8 active productive labor, but includes time given by the employee to the
9 employer even though part of the time may be spent in idleness. Some of
10 the hours spent by employees, under certain circumstances... in meal
periods and rest periods are regarded as working time and some are not.
The governing principles are discussed in part 785 of this chapter
(interpretative bulletin on “hours worked”) and part 790 of this chapter
(statement of effect of Portal-to-Portal Act of 1947). ...

11 65. 29 C.F.R. § 778.223 states:

12 The United States Supreme Court originally stated that employees subject
13 to the act must be paid for all time spent in “physical or mental exertion
14 (whether burdensome or not) controlled or required by the employer and
15 pursued necessarily and primarily for the benefit of the employer and his
16 business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No.*
17 *123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need
18 be no exertion at all and that all hours are hours worked which the
19 employee is required to give his employer, that “an employer, if he
20 chooses, may hire a man to do nothing, or to do nothing but wait for
21 something to happen. Refraining from other activity often is a factor of
22 instant readiness to serve, and idleness plays a part in all employments in
23 a stand-by capacity. Readiness to serve may be hired, quite as much as
24 service itself, and time spent lying in wait for threats to the safety of the
25 employer’s property may be treated by the parties as a benefit to the
26 employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v.*
Swift (1944) 323 U.S. 134. The workweek ordinarily includes “all the time
27 during which an employee is necessarily required to be on the employer’s
28 premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens*
Pottery Co. (1946) 328 U.S. 680. The Portal-to-Portal Act did not change
the rule except to provide an exception for preliminary and postliminary
activities. See Section 785.34.

26 66. Labor Code section 1197 makes it unlawful for an employer to pay an employee
27 less than the minimum wage required under the applicable Wage Order for all hours worked
28 during a payroll period.

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1 67. California Labor Code § 1194 invalidates any agreement between an employer
2 and an employee to work for less than the minimum or overtime wage required under the
3 applicable Wage Order.

4 68. Labor Code section 1198 makes it unlawful for an employer to employ an
5 employee under conditions that violate the Wage Order.

6 69. Employers must compensate non-exempt employees for “off-the-clock” work
7 (before punching in or after punching out on a time clock) if the employers knew or should have
8 known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
9 Cal.4th 575, 585.

10 70. As described above, at all relevant times, Defendants failed to compensate Plaintiff
11 and the Class Members for all hours worked, including, but not limited to overtime wages for all
12 overtime hours they worked, at the correct rates of pay. Plaintiff is informed and believes that, at
13 all relevant times, Defendants have applied centrally devised policies and practices to her and the
14 Class Members with respect to working conditions and compensation arrangements.

15 71. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class
16 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
17 the full amount of wages earned during each pay period during the applicable limitations period.

18 72. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
19 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
20 unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts
21 subject to proof.

22 73. Additionally, with respect to this cause of action, on behalf of herself and the Class
23 Members, Plaintiff prays for an award of reasonable costs and attorneys’ fees, including interest
24 thereon, as permitted by law, all in amounts subject to proof.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO INDEMNIFY**

27 **(Lab. Code §§ 1198 & 2802)**

28 **(By Plaintiff and the Class against all Defendants)**

74. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

75. At all relevant times, Plaintiff and the Class Members have been non-exempt
employees of Defendants and entitled to the benefits and protections of the California Labor Code

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1 §§ 1198 and 2802 and the Wage Order.

2 76. In pertinent part, California Labor Code § 2802(a) states:

3 “An employer shall indemnify his or her employee[s] for all
4 necessary expenditures incurred by the employee in direct
5 consequence of the discharge of his or her duties.”

6 77. California Labor Code § 1198 prohibits employers from employing their
7 employees under conditions prohibited by the Wage Order.

8 78. At all relevant times, Defendants required Plaintiff and the Class Members to use
9 translation apps on their personal cellphones to interpret communications with their patients.
10 Defendants, which were at all time aware of this practice, failed to reimburse Plaintiff and the
11 Class Members for such business expenses during or after their employment ended.

12 79. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
14 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
15 during the course of performing their duties.

16 80. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
17 Members are entitled to reimbursement for all necessary expenditures and losses and interest
18 thereon, due and owing to them within four years of the date of the filing of the Complaint until
19 the entry of judgment.

20 81. Accordingly, with respect to this cause of action, on behalf of herself and the Class
21 Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys’ fees
22 pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

25 **(Lab. Code § 226)**

26 **(Plaintiff and the Class against all Defendants)**

27 82. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

28 83. At all relevant times during the applicable limitations period, Plaintiff and the
other Class Members have been employees of Defendants and entitled to the benefits and
protections of California Labor Code section 226.

84. Pursuant to California Labor Code section 226(a), Plaintiff and the Class Members

1 were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized
2 statement showing:

- 3 (1) Gross wages earned,
- 4 (2) Total hours worked by the employee, except for any employee whose
5 compensation is solely based on a salary and who is exempt from payment of overtime under
6 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 7 (3) The number of piece rate units earned and any applicable piece rate if the
8 employee is paid on a piece-rate basis,
- 9 (4) All deductions, provided that all deductions made on written orders of the
10 employee may be aggregated and shown as one item,
- 11 (5) Net wages earned,
- 12 (6) The inclusive dates of the period for which the employee is paid,
- 13 (7) The name of the employee and his or her social security number, except
14 that by January 1, 2008, only the last four digits of his or her social security number or an
15 employee identification number other than a social security number may be shown on the itemized
16 statement,
- 17 (8) The name and address of the legal entity that is the employer, and
- 18 (9) All applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee.

20 85. Pursuant to California Labor Code section 226(e), an employee suffering injury as
21 a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
22 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
23 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
24 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
25 is entitled to an award of costs and reasonable attorneys' fees.

26 86. Pursuant to California Labor Code section 226(e), an employee is deemed to suffer
27 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
28 injury if the employer fails to provide accurate and complete information as required by California
Labor Code section 226(a) and the employee cannot "promptly and easily determine" from the
wage statement alone one or more of the following:

- A. The amount of the gross wages or net wages paid to the employee during

1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code section 226(a);

3 B. Which deductions the employer made from gross wages to determine the
4 net wages paid to the employee during the pay period;

5 C. The name and address of the employer and, if the employer is a farm labor
6 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
7 and address of the legal entity that secured the services of the employer during the pay period;
8 and

9 D. The name of the employee and only the last four digits of his or her social
10 security number or an employee identification number other than a social security number.

11 87. "Promptly and easily determine," as stated in California Labor Code section
12 226(e), means a reasonable person would be able to readily ascertain the information without
13 reference to other documents or information.

14 88. As alleged herein, Defendants failed to provide Plaintiff and the other Class
15 Members with all meal and rest periods in compliance with California law. They also failed to
16 provide them with premium wages on workdays they failed to provide them with one or more
17 meal and/or rest periods in compliance with California law. Defendants also failed to compensate
18 Plaintiff and the other Class Members for all hours worked at the correct rates of pay. As a result,
19 Defendants have failed to properly itemize Plaintiff and the other Class Members' gross and net
20 wages earned, total hours worked, hourly rate of pay, the corresponding number of hours worked
21 at each hourly rate, and other requirements of California Labor Code § 226. Defendants failed to
22 state in the wage statements they issued to Plaintiff and the Class Members all their hours worked
23 and wages earned. Defendants also failed to state the correct name and address of the business
24 entity that employed Plaintiff and the Class Members. As a result, Defendants have violated
25 California Labor Code § 226.

26 89. Defendants' failure to provide Plaintiff and the other Class Members with accurate
27 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
28 the other Class Members with accurate wage statements but intentionally provided wage
statements that Defendants knew were not accurate.

90. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate

1 wage statements were violated and they were misled about the amount of wages they had actually
2 earned and were owed. In addition, the absence of accurate information on their wage statements
3 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
4 and mathematical computations to determine the amounts of wages owed, has caused difficulty
5 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
6 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
7 and the other Class Members were not able to ascertain from the wage statements whether
8 Defendants complied with their obligations under California Labor Code section 226(a).

9 91. Pursuant to California Labor Code section 226(e), Plaintiff and the other Class
10 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
11 for the initial pay period in which a violation of California Labor Code section 226(a) occurred
12 and one hundred dollars for each violation of California Labor Code section 226(a) in a
13 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
14 Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

15 92. Accordingly, with respect to this cause of action, on behalf of herself and the other
16 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
17 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
18 proof.

19 **SIXTH CAUSE OF ACTION**
20 **WAITING TIME PENALTIES**
21 **(Lab. Code §§ 201-203)**

22 **(By Plaintiff and the Class against all Defendants)**

23 93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 94. At all relevant times during the applicable limitations period, Plaintiff and the
25 Class have been non-exempt employees of Defendants and entitled to the benefits and
26 protections of California Labor Code §§ 201-203, and the Wage Order.

27 95. Labor Code § 201 provides that all earned and unpaid wages of an employee who
28 is discharged are due and payable immediately at the time of discharge.

96. Labor Code § 202 provides that all earned and unpaid wages of an employee who
quits after providing at least 72-hours notice before quitting are due and payable at the time of
quitting and that all earned and unpaid wages of an employee who quits without providing at


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1 least 72-hours notice before quitting are due and payable within 72 hours.

2 97. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
3 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
4 § 201 or § 202.

5 98. Plaintiff is informed and believes that Defendants' failures to timely pay all final
6 wages to her and the Class members have been willful in that Defendants have the ability to pay
7 final wages in accordance with Labor Code §§ 201 and 202 but have intentionally adopted
8 policies or practice that are incompatible with those requirements.

9 99. Labor Code § 203 provides that the wages of an employee continue on a daily
10 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
11 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

12 100. Defendants failed to pay Plaintiff and the Class Members whose employment
13 ended all of the earned, but unpaid wages described above by the conclusion of their employment.

14 101. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
15 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
16 Defendants have deliberately maintained policies and practices that violate the requirements of
17 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
18 to comply with those legal requirements.

19 102. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
20 herself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
21 for each Class Member.

22 **SEVENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(Bus. & Prof. Code §§ 17200, et seq.)**

25 **(BY Plaintiff and the Class against all Defendants)**

26 103. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

27 104. At all relevant times during the applicable limitations period, Plaintiff and the
28 other Class Members have been employees of Defendants and entitled to the benefits and
29 protections of the Business and Professions Code sections 17200, et seq.

30 105. The unlawful conduct of Defendants alleged herein amounts to and constitutes
31 unfair competition within the meaning of California Business & Professions Code sections 17200,


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1 et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
2 unfairly gained a competitive advantage over other comparable companies doing business in
3 California that comply with their legal obligations to, among other things, pay their employees
4 premium wages for workdays in which they did not provide employees with one or more meal
5 and rest periods, reimburse their employees for reasonable expenses incurred during the course
6 of performing their duties, and pay them all earned wages for all regular and overtime hours
7 worked.

8 106. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
9 other Class Members have suffered injuries in fact and lost money or property. Defendants
10 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
11 premium wages and reimbursement for expenses that Plaintiff and the other Class Members
12 incurred during the course of performing their duties.

13 107. Pursuant to California Business & Professions Code section 17203, Plaintiff and
14 the other Class Members are entitled to restitution of all monies rightfully belonging to them that
15 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
16 and unfair business practices.

17 108. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
18 connection with their unfair competition claims pursuant to California Code of Civil Procedure
19 section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

20 **EIGHTH CAUSE OF ACTION**

21 **CIVIL PENALTIES**

22 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

23 109. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 110. The "Aggrieved Employees" are all members of the Class defined above who
25 Defendants employed during the period beginning December 7, 2019 and ending on the date
26 that final judgment is entered in this action.

27 111. Labor Code § 204 states

28 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
or 204.2, earned by any person in any employment are due and payable twice
during each calendar month, on days designated in advance by the employer as
the regular paydays. Labor performed between the 1st and 15th days, inclusive,
of any calendar month shall be paid for between the 16th and the 26th day of the
month during which the labor was performed, and labor performed between the

16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

112. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

113. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

114. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

115. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation

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1 (penalty amounts established by California Labor Code § 210).

2 B. For violations of California Labor Code § 226(a), two hundred fifty
3 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
4 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
5 established by California Labor Code § 226.3).

6 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
7 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
8 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
9 established by California Labor Code § 558).

10 D. For violations of California Labor Code § 1197, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
12 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
13 pay period (regardless of whether the initial violations were intentionally committed) (penalty
14 amounts established by California Labor Code § 1197.1).

15 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
16 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
17 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
18 period for each subsequent violation (penalty amounts established by California Labor Code §
19 2699(f)(2)).

20 116. Plaintiff has complied with the procedures for bringing suit specified in
21 California Labor Code § 2699.3. By letter dated December 7, 2020, Plaintiff filed written notice
22 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
23 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
24 to have been violated, including the facts and theories to support the alleged violations. A true
25 and correct copy of the notice to the LWDA dated December 7, 2020 is attached as Exhibit A.
26 Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has
27 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
28 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it
does not intend to investigate these allegations.

117. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in

connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid Wages;
- E. Actual Damages;
- F. Statutory Damages;
- G. Civil Penalties;
- H. Liquidated Damages;
- I. Restitution;
- J. Declaratory and injunctive relief;
- K. Equitable relief;
- L. Pre-judgment interest;
- M. Statutory penalties;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

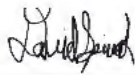
DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: August 25, 2021

By 

DAVID SPIVAK
CAROLINE TAHMASSIAN,
MAYA CHEAITANI,
Attorneys for Plaintiff, JASMINE BROWN,
and all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 7, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency

Attn: PAGA Administrator

<http://dir.tflaforms.net>

Via Electronic Submission

RE: *Jasmine Brown/ Playa Del Ray*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jasmine Brown (hereafter “Brown”) provides notice on behalf of herself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to certified nursing assistants (“CNAs”), restorative nursing assistants (“RNAs”) and persons in similar positions (hereafter referred to as “Aggrieved Employees”), by BQ Operations Holdings LLC, a Delaware limited liability company, SunBridge Hallmark Health Services, LLC, a Delaware limited liability company doing business in California as Playa Del Rey Center, Fountain View Subacute and Nursing Center, LLC, a Delaware limited liability company doing business in California as Fountain View Subacute and Nsg, Genesis Healthcare, a business entity of unknown form, Genesis Healthcare LLC, a Delaware limited liability company, Genesis Healthcare, Inc., a business entity of unknown form, and GHC Payroll, LLC, a business entity of unknown form (collectively referred to as “Playa Del Ray”), for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

At all relevant times, Playa Del Ray has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Brown and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

On or about February 11, 2019, Playa Del Ray first employed Brown to work in California as a CNA and RNA at its Fountain View Subacute and Nsg skilled nursing and rehabilitation center located in Los Angeles, California. Playa Del Ray transferred Brown to a second facility located in Playa Del Ray, California on or about April 20, 2020. Playa Del Ray continuously employed Brown from her hire date until approximately May 28, 2020.

At all relevant times, Playa Del Ray compensated Brown and the other Aggrieved Employees with an hourly rate of pay and issued her wages on a bi-weekly basis.

At all relevant times, Playa Del Ray failed to provide Brown and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. Playa Del Ray often understaffed Brown and the Aggrieved Employees’ job sites and as a result of their workload, Brown and the Aggrieved Employees had no choice but to take late meal and/or rest periods or miss them all together to meet Playa Del Ray’s expectations. Additionally, Playa Del Ray prohibited Brown and the other Aggrieved Employees from leaving their job sites and required them to stay within the premises during their rest breaks. Playa Del Ray failed to pay premium wages for days on which it failed to provide Brown and the Aggrieved Employees with rest and/or meal periods as provided by California Law.

Playa Del Ray failed to compensate Brown and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Playa Del Ray required Brown and the Aggrieved Employees to work off-the-clock without compensation. During the COVID-19 pandemic, Playa Del

Ray required Brown and the Aggrieved Employees to go through a temperature check process and fill out a questionnaire before clocking in at the beginning of their shifts and without pay. This process took approximately five (5) minutes to complete.

While Playa Del Ray did not list fluency in languages other than English as a job requirement at time of hire, Playa Del Ray expected Brown and the Aggrieved Employees to interpret and act upon patient communications in languages other than English, including Spanish and Tagalog. However, it failed to provide Brown and the other Aggrieved Employees with interpreters to communicate with non-English speaking patients. This compelled Brown and the other Aggrieved Employees to use translation apps on their personal cellphones to interpret communications with their patients. Playa Del Ray, which was at all times aware of this practice, failed to reimburse Brown and the other Aggrieved Employees for such business expenses during or after their employment ended.

At all relevant times, Playa Del Ray knowingly and intentionally failed to provide Brown and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226. Playa Del Ray also failed to state the correct name and address of the business entity that employed Brown and the other Aggrieved Employees.

For the reasons stated herein, Brown alleges the following violations of the California Labor Code and the Wage Order 5 on behalf of herself and the Aggrieved Employees:

- a) Playa Del Ray failed to provide Brown and the Aggrieved Employees with all rest breaks and meal periods;
- b) Playa Del Ray failed to pay Brown and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;

- c) Playa Del Ray failed to pay Brown and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Playa Del Ray failed to pay Brown and the Aggrieved Employees for all hours worked at the correct rates of pay;
- e) Playa Del Ray failed to indemnify Brown and the Aggrieved Employees for all business expenses;
- f) Playa Del Ray failed to provide Brown and the Aggrieved Employees with accurate wage statements;
- g) Playa Del Ray failed to timely pay Brown and the Aggrieved Employees all earned and unpaid wages during their employment with Playa Del Ray; and
- h) Playa Del Ray failed to timely pay Brown and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with Playa Del Ray.

Accordingly, Brown now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Playa Del Ray's alleged violations of the California Labor Code and Wage Order 5.

Wage Order 5

Wage Order 5 applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

“(2) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;...” § 2(P) (4)

Also see §2 (J) which defines “Healthcare Industry” to include: “... skilled nursing facilities,...”

At all relevant times during the applicable limitations period, Playa Del Ray employed Brown at its skilled nursing facilities. Accordingly, Brown and the Aggrieved Employees are entitled to the protections provided under Wage Order 5.

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may 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 may 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.

In relevant part, Section 11 of Wage Order 5 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- ...
- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in

excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or

required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.

29 C.F.R. § 785.7.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Dougllass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor

Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

Wage Order 5, § 11(D).

In relevant part, Section 12 of Wage Order 5 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states in relevant part:

(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.

Playa Del Ray intentionally and improperly failed to provide all timely and duty-free rest breaks and/or meal periods to Brown and other Aggrieved Employees as required by law. In failing to do so, Playa Del Ray violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Brown seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay (penalties set by Labor Code §558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) 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.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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.

At all relevant times during the applicable limitations period, Playa Del Ray failed to compensate Brown and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, Brown seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2));
3. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1); and

4. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

As discussed above, Playa Del Ray required Brown and the other Aggrieved Employees to incur certain business expenses. Playa Del Ray failed to indemnify Brown and the other Aggrieved Employees for such expenses both during and after their employment ended.

Accordingly, Brown seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 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.

At all relevant times during the applicable limitations period, Playa Del Ray violated California Labor Code § 226 in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. Playa Del Ray also failed to state the correct name and address of the business entity that employed Brown and the other Aggrieved Employees.

Accordingly, Brown seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failures to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due

and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Playa Del Ray's failure to pay Brown and the Aggrieved Employees wages for off-the-clock work, including, but not limited to, off-the-clock meal periods and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Playa Del Ray failed to timely pay all wages due during employment. Accordingly, Brown seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. Due to the violations described above, Playa Del Ray failed to pay final wages in a timely manner to Brown and the Aggrieved Employees.

By willfully failing to pay wages to Brown and other Aggrieved Employees as set forth above, at the time of termination of employment, Playa Del Ray is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Brown seeks civil penalties from Playa Del Ray as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Jasmine Brown

Walter Haines, Esq.

BQ Operations Holdings LLC

c/o Corporation Service Company Which will do business in California
as CSC-Lawyers Incorporated Service, (C1592199)

Agent for Service of Process

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

SunBridge Hallmark Health Services, LLC

c/o Corporation Service Company Which will do business in California
as CSC-Lawyers Incorporated Service, (C1592199)

Agent for Service of Process

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Fountain View Subacute and Nursing Center, LLC

c/o Corporation Service Company Which will do business in California
as CSC-Lawyers Incorporated Service, (C1592199)

Agent for Service of Process

2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Genesis Healthcare
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Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Genesis Healthcare LLC
c/o Corporation Service Company Which will do business in California
as CSC-Lawyers Incorporated Service, (C1592199)
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Genesis Healthcare, Inc
c/o Corporation Service Company Which will do business in California
as CSC-Lawyers Incorporated Service, (C1592199)
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

GHC Payroll, LLC
c/o Corporation Service Company Which will do business in California
as CSC-Lawyers Incorporated Service, (C1592199)
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Wednesday, August 25, 2021, I served the foregoing document described as **PROPOSED SECOND AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

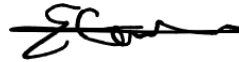
CURTIS A. GRAHAM
ALEXANDRIA M. WITTE
LITTLER MENDELSON, P.C.
633 West 5th Street
63rd Floor
Los Angeles, CA 90071
awitte@littler.com
cagraham@littler.com

XXXX (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASE ANYWHERE**.

EXECUTED on Wednesday, August 25, 2021, at Los Angeles, California.

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

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



ELIZABETH CONTRERAS