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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARCOS ANTONIOS, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

REHABCARE GROUP EAST, LLC, a
California Limited Liability Company;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 21STCV15497

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 1198.5, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Marcos Antonios (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant REHABCARE GROUP EAST,
8 LLC (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on
9 behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Rehabcare Group East, LLC (“DEFENDANT”) is a California limited
24 liability company that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT provides rehabilitation services. The Company offers physical,
27 occupational, assisted living, and speech-language therapies, including rehabilitation program
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1 management, outpatient rehabilitation unit, and wellness and restorative programs.

2 6. PLAINTIFF was employed by DEFENDANT in California from April of 2019
3 to December of 2020 and was at all times classified by DEFENDANT as a non-exempt
4 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
5 payment of minimum and overtime wages due for all time worked.

6 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to
9 himself and all individuals who are or previously were employed by DEFENDANT in
10 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
11 the time period of December 4, 2019 until a date as determined by the Court (the "PAGA
12 PERIOD").

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
17 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of Regulations,
18 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby
19 gives rise to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF
20 and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor
21 Code § 2699, *et seq.*

22 9. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
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27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
2 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
3 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
4 responsible in some manner for one or more of the events and happenings that proximately
5 caused the injuries and damages hereinafter alleged.

6 10. The agents, servants and/or employees of the Defendants and each of them acting
7 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
8 agent, servant and/or employee of the Defendants, and personally participated in the conduct
9 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
10 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
11 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
12 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
13 agents, servants and/or employees.

14 15 **THE CONDUCT**

16 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
20 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
21 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
22 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
23 was from time to time interrupted by work assignments while clocked out for what should have
24 been PLAINTIFF's off-duty meal break. Further, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES from time to time were not paid wages for all time worked, including overtime
26 wages, such that in the aggregate employees were underpaid wages as a result of
27 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees.
28 DEFENDANT also underpaid sick pay wages to PLAINTIFF and other AGGRIEVED

1 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
2 and other non-exempt employees regularly earn non-discretionary remuneration, including but
3 not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the
4 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
5 EMPLOYEES at their base rates of pay. DEFENDANT's policy and practice not to pay
6 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by
7 DEFENDANT's business records.

8 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
9 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
10 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
11 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
12 for more than five (5) hours during some shifts without receiving a meal break. Further,
13 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
14 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
15 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
16 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
17 and in accordance with DEFENDANT's corporate policy and practice.

18 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
19 were also required from time to time to work in excess of four (4) hours without being provided
20 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
21 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
22 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
24 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
25 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
26 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
27 to provide employees with off-duty rest periods, which the California Supreme Court defined
28 as time during which an employee is relieved from all work related duties and free from

1 employer control. In so doing, the Court held that the requirement under California law that
2 employers authorize and permit all employees to take rest period means that employers must
3 relieve employees of all duties and relinquish control over how employees spend their time
4 which includes control over the locations where employees may take their rest period.
5 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
6 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
7 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
8 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
9 leave the work premises during their rest period.

10 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
11 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
12 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
13 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
14 time worked, meaning the time during which an employee was subject to the control of an
15 employer, including all the time the employee was permitted or suffered to permit this work.
16 DEFENDANT required these employees to work off the clock without paying them for all the
17 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
18 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
19 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
20 time worked by working without their time being accurately recorded and without compensation
21 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
22 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
23 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
24 1197, and 1197.1.

25 15. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
28 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section

1 2802, employers are required to indemnify employees for all expenses incurred in the course
2 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful."

7 16. In the course of their employment PLAINTIFF and other AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
9 cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
11 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
12 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
13 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
14 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
15 for the benefit of DEFENDANT.

16 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
17 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
18 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
19 provides that every employer shall furnish each of his or her employees with an accurate
20 itemized wage statement in writing showing, among other things, gross wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding amount of time
22 worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to
23 identify the correct rates of pay, including for the "Regular Retro" item of pay, which was a
24 wage payment. Aside, from the violations listed above in this paragraph, DEFENDANT failed
25 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
26 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violated
28 Cal. Lab. Code § 226.

1 18. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
4 requires employers to pay employees all wages owed within eleven (11) days of the close of the
5 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
6 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close of
7 the payroll period.

8 19. In violation of the applicable sections of the California Labor Code and the
9 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
10 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT is
12 intended to purposefully avoid the payment for all time worked as required by California law
13 which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
14 who complied with the law. To the extent equitable tolling operates to toll claims by the
15 AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted
16 accordingly.

17 20. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
18 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
19 to accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
20 AGGRIEVED EMPLOYEES. The proper recording of these employees’ missed meal and rest
21 breaks is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of
22 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
23 required compensation for work performed by the AGGRIEVED EMPLOYEES and violated
24 the California Labor Code and regulations promulgated thereunder as herein alleged.

25 21. All of the conduct and violations alleged herein occurred during the
26 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
27 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
28 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*

1 2018 AJDAR 12157 (Certified for Publication 12/19/18).

2
3 **JURISDICTION AND VENUE**

4 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10.

6 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
7 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
8 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
9 in this County and/or conducts substantial business in this County, and (ii) committed the
10 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
11 EMPLOYEES.

12 **FIRST CAUSE OF ACTION**

13 **For Violation of the Private Attorneys General Act**

14 **[Cal. Lab. Code §§ 2698, *et seq.*]**

15 **(By PLAINTIFF and Against All Defendants)**

16 24. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 25. PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
20 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
21 fundamentally a law enforcement action designed to protect the public and not to benefit private
22 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
23 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
24 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
25 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
26 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
27 subject to arbitration.

28 26. PLAINTIFF, and such persons that may be added from time to time who satisfy

1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to
3 himself and all individuals who are or previously were employed by DEFENDANT in
4 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
5 the time period of December 4, 2019 until a date as determined by the Court (the "PAGA
6 PERIOD").

7 27. On December 4, 2020, PLAINTIFF gave written notice by electronic mail to the
8 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
9 employer of the specific provisions of this code alleged to have been violated as required by
10 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
11 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
12 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
13 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

14 28. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
17 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
18 to pay minimum wages, (e) failed to reimburse for required expenses, and (f) failed to provide
19 wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§
20 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
21 1198, 1198.5, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
22 (B), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a
23 result of such conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as prescribed
24 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of
25 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
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28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 EMPLOYEES.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
4 severally, as follows:

5 1. On behalf of the State of California and with respect to all AGGRIEVED
6 EMPLOYEES:

7 A) Recovery of civil penalties as prescribed by the Labor Code Private
8 Attorneys General Act of 2004; and,

9 B) An award of attorneys' fees and cost of suit, as allowable under the
10 law, including, but not limited to, pursuant to Labor Code §2699.

11
12 Dated: April 23, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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14
15 By: /s/ Norman Blumenthal
16 Norman B. Blumenthal
17 Attorneys for Plaintiff
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