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and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

NANCY MBAKATA, on behalf of herself
and all others similarly situated

Plaintiff,

v.

ONE CLICK CARE LLC, a California
Limited Liability Company; ROYAL
PALMS POST ACUTE, LLC, a
California Limited Liability Company;
BEECAN HEALTH LLC, a California
Limited Liability Company; and DOES 1-
10, inclusive,

Defendants.

Case No. 21STCV14514

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Carolyn B. Kuhl
Department 12

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT**

- 1. Failure to Pay Minimum, Regular and Overtime Wages**
- 2. Failure to Provide Meal Periods**
- 3. Failure to Authorize or Permit Paid Rest Periods**
- 4. Failure to Provide Accurate Itemized Wage Statements**
- 5. Failure to Timely Pay Wages Due at Separation**
- 6. Failure to Maintain Accurate Records**
- 7. Failure to Pay Vacation Wages**
- 8. Violations of The Unfair Competition Law**

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 04 2021

Sherri R. Carter, Executive Officer/Clerk of Court

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- 9. Civil Penalties Under the PAGA for Failure to Pay Minimum, Regular and Overtime Wages**
- 10. Civil Penalties Under the PAGA for Failure to Provide Meal Periods**
- 11. Civil Penalties Under the PAGA for Failure to Authorize or Permit Paid Rest Periods**
- 12. Civil Penalties Under the PAGA for Failure to Provide Accurate Itemized Wage Statements**
- 13. Civil Penalties Under the PAGA for Failure to Timely Pay Wages Due at Separation**
- 14. Civil Penalties Under the PAGA for Failure to Maintain Accurate Records**
- 15. Civil Penalties Under the PAGA for Failure to Pay Vacation Wages**
- DEMAND FOR JURY TRIAL**

NATURE OF CLAIM

1. Plaintiff NANCY MBAKATA (“Plaintiff”) brings this action on behalf of herself and a proposed Class of all non-exempt employees, including Certified Nursing Assistants (“CNAs”), against Defendants ONE CLICK CARE LLC, ROYAL PALMS POST ACUTE, LLC, and BEECAN HEALTH LLC, and Does 1-10 (collectively, “Defendants”) for unlawful employment policies that denied, and continue to deny, proposed Class Members wages and benefits to which they are lawfully entitled.

2. Plaintiff, on behalf of herself and all Class Members, brings this action pursuant to Labor Code sections 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1174, 1194 and 1194.2; applicable Industrial Welfare Commission (“IWC”) Wage Order(s); and Business and Professions Code sections 17200 *et seq.*, seeking unpaid wages, liquidated damages, equitable relief, prejudgment interest, reasonable attorneys’ fees and costs, and any other relief this Court deems proper.

3. Plaintiff notified the California Labor and Workforce Development Agency (“LWDA”) of these claims. The LWDA did not intervene, and Defendants did not attempt to cure within the time required. Plaintiff seeks civil penalties as a representative of the State of California, as provided by the Private Attorneys General Act (“PAGA”), on behalf of the aggrieved employees who held the positions identified and suffered one or more of the violations alleged for the period one year and 65 days from the date of filing for PAGA penalties (“PAGA Period”). A true and correct copy of the March 23, 2021 Notice showing compliance with Labor Code section 2699.3 is attached as **Exhibit 1**.

PARTIES

4. Plaintiff NANCY MBAKATA is a resident of Los Angeles, California. Plaintiff worked for Defendants as a CNA at the Royal Palms Post Acute long-term care facility in Glendale, California from approximately October 9, 2020 through January 8, 2021.

5. Defendant ONE CLICK CARE LLC is a California limited liability company. ONE CLICK CARE LLC is the entity listed as the employer on Plaintiff’s wage statements.

6. Defendant ROYAL PALMS POST ACUTE, LLC is a California Limited

1 Liability Company. ROYAL PALMS POST ACUTE, LLC operates the Royal Palms Post
2 Acute long-term care facility where Plaintiff worked.

3 7. Defendant BEECAN HEALTH LLC is a California limited liability company.
4 BEECAN HEALTH LLC was the entity listed on the CNA job posting to which Plaintiff
5 responded. BEECAN HEALTH LLC provides a variety of services to skilled nursing facilities,
6 assisted living homes, and other healthcare industry sectors throughout Southern California,
7 including recruitment.

8 8. Does 1 through 10, inclusive, are persons or entities whose true names and
9 identities are unknown to Plaintiff. They are sued by fictitious names. Plaintiff will amend to
10 allege their true names and capacities when known. Plaintiff is informed and believes each Doe
11 defendant: is the agent, representative, or parent or subsidiary entity of the named Defendants;
12 acted in concert with the named Defendants; and is a proximate cause of the events, injuries,
13 and harms suffered by Plaintiff and the proposed Class. At all relevant times each Defendant
14 was the agent or employee of each of the other Defendants and was acting within the course
15 and scope of such agency or employment.

16 **JURISDICTION AND VENUE**

17 9. Venue as to each Defendant is proper in this judicial district. Code of Civil
18 Procedure § 395. Defendants conduct business in Los Angeles County and each Defendant is
19 within the Court's jurisdiction for service of process. The unlawful acts alleged have a direct
20 effect on Plaintiff and proposed Class Members within Los Angeles County and California.

21 10. No federal jurisdiction exists to remove this action to federal court. The issues
22 are based solely on California law, including the Labor Code, IWC Wage Order(s), Code of
23 Civil Procedure, and Business and Professions Code.

24 11. As a PAGA action, this matter is not subject to removal. 28 U.S.C. §§ 1332(a)-
25 (d).

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CLASS ACTION ALLEGATIONS

12. Plaintiff seeks to represent a Class defined as:

All Defendants' non-exempt employees, including Certified Nursing Assistants ("CNAs"), at any time during the four years before the filing of this Complaint through the date of trial.

13. Plaintiff seeks to certify a subclass of employees defined as:

"Minimum Wages Subclass"

All Class Members who performed work, were subject to Defendants' control, or were suffered or permitted to work, for any period of time while not clocked in.

14. Plaintiff seeks to certify a subclass of employees defined as:

"Overtime Wages Subclass"

All Class Members who worked over eight (8) hours of work in one day or forty (40) hours in one week.

15. Plaintiff seeks to certify a subclass of employees defined as:

"First Meal Period Subclass"

All Class Members who worked one or more periods in excess of five (5) hours.

16. Plaintiff seeks to certify a subclass of employees defined as:

"Second Meal Period Subclass"

All Class Members who worked one or more periods in excess of ten (10) hours.

17. Plaintiff seeks to certify a subclass of employees defined as:

"Rest Period Subclass"

All Class Members who worked one or more periods in excess of three and one-half (3.5) hours.

18. Plaintiff seeks to certify a subclass of employees defined as:

"Wage Statement Subclass"

All Class Members who received one or more itemized wage statements during the one year preceding the filing of this Complaint.

19. Plaintiff seeks to certify a subclass of employees defined as:

"Waiting Time Subclass"

All Class Members whose employment ended at any time during the three years preceding the filing of this Complaint.

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20. Plaintiff seeks to certify a subclass of employees defined as:

“Records Subclass”

All Class Members whose total daily hours worked or start or end time of work periods or meal periods was not accurately recorded by Defendants.

21. Plaintiff seeks to certify a subclass of employees defined as:

“Vacation Wages Subclass”

All Class Members who had accrued but unused vacation time when their employment ended.

22. Plaintiff seeks to certify a subclass of employees defined as:

“UCL Subclass”

All Class and Subclass Members who were subject to Defendants’ unlawful or unfair business acts or practices.

23. Plaintiff reserves the right to amend or modify the Class description, including by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

24. **Commonality**: This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

25. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable because they can be identified and located using Defendants’ payroll and personnel records.

26. **Numerosity**: The potential members of the Class and Subclasses as defined are so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit the parties and this Court. The number of Class and Subclass Members is unknown to Plaintiff, but is estimated to be in excess of 100 individuals. The number and identity of members can be readily ascertained using Defendants’ records.

27. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses because all members of the Class and Subclasses sustained similar injuries and damages caused by Defendants’ common course of conduct in violation of law.

28. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses, will fairly protect the interests of the Class and Subclass Members and has no interests

1 antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent,
2 skilled, and experienced in litigating large employment law class actions.

3 29. **Superiority**: A class action is superior to other available means for the fair and
4 efficient adjudication of this controversy. Individual joinder of all Class Members is not
5 practicable, and questions of law and fact common to the Class predominate over questions
6 affecting only individual Class Members. A Class action will allow those similarly situated to
7 litigate their claims in the most efficient and economical manner for the parties and the judicial
8 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of
9 this action that precludes its maintenance as a class action.

10 30. The predominating common questions of law and fact include:

- 11 a. Whether Defendants have a policy and practice of failing to pay wages for
12 time spent under the Defendants' control when not clocked-in;
- 13 b. Whether Defendants have a policy or practice of failing to fully pay
14 overtime compensation for hours worked in excess of eight per day or forty
15 per week;
- 16 c. Whether Defendants have a policy or practice of failing to pay overtime
17 compensation at the correct overtime rate;
- 18 d. Whether Defendants have a policy or practice of failing to provide
19 compliant meal periods;
- 20 e. Whether Defendants have a policy or practice of failing to authorize or
21 permit compliant rest periods;
- 22 f. Whether Defendants have a policy or practice of failing to provide accurate
23 itemized wage statements;
- 24 g. Whether the Plaintiff Class and Waiting Time Subclass Members are
25 entitled to waiting time penalties under Section 203;
- 26 h. Whether Defendants have a policy or practice of failing to maintain
27 accurate records;
- 28 i. Whether Defendants have a policy or practice of failing to pay vacation

wages for accrued but unused vacation time;

j. Whether Defendants violated Sections 17200, *et seq.* of the Business and Professions Code; and

k. Whether the Plaintiff Class and Subclasses are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

FACTUAL ALLEGATIONS

31. At all relevant times, Plaintiff and each member of the Plaintiff Class were employed by Defendants in California, and Defendants conducted business in California.

32. Defendants failed to pay Plaintiff and other Class Members all minimum, regular, and overtime wages for all hours worked or under the Defendants' control.

33. Defendants did not pay any wages to Plaintiff and other Class Members for time they worked or were under Defendants' control off-the-clock, including time spent attending briefings, filling out patients' charts, and working during meal periods. To the extent this time was overtime or double-time, Defendants failed to pay overtime and double-time wages.

34. Defendants failed to pay all overtime wages because they failed to properly calculate the regular rate of pay for purposes of calculating overtime rates (time and a half and double-time rates). Specifically, Defendants failed to include non-discretionary bonuses, among other things, into the regular rate of pay for the purpose of calculating overtime.

35. Defendants had a consistent policy which did not provide Plaintiff and Class Members with duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and failed to pay such employees one (1) hour of pay at their regular rate of compensation for each workday a meal period was not authorized or permitted, as required by California wage and hour laws. Plaintiff and other Class Members regularly worked shifts of more than 10 hours per day and were not provided with a second off-duty meal period of 30 minutes for each shift of more than 10 hours, which began before the end of the tenth hour of work. When meal periods were provided, they were often non-compliant because they were short, late, or required to be taken on the premises. On information and belief, Plaintiff and other Class Members did not waive their right to receive

1 meal periods, including their right to a second meal period on eligible workdays.

2 36. Defendants had a consistent policy which did not authorize or permit Plaintiff
3 and Class Members to receive duty-free rest periods of at least ten (10) minutes per four (4)
4 hours, or major fraction, worked, and failed to pay such employees one (1) hour of pay at their
5 regular rate of compensation for each workday a rest period was not authorized or permitted, as
6 required by California wage and hour laws. Furthermore, Plaintiff and Class Members regularly
7 worked shifts over 10 hours per day and were not provided with a third duty-free rest period of
8 10-minutes for each shift over 10 hours.

9 37. Defendants consistently and knowingly failed to provide accurate itemized wage
10 statements to Plaintiff and other Class Members. Wage statements issued by Defendants did not
11 include, among other things, the correct total hours worked, the employer's address, nor the
12 correct number of hours worked at each hourly rate. The total hours worked were incorrectly
13 listed because off-the-clock time spent under Defendants' control was not included. Further,
14 Defendants added fabricated hours to Plaintiff's and Class Members' wage statements to make
15 it appear as though there were enough CNAs working at one time to satisfy the Health
16 Department's patient care requirements. No employer address was listed on the wage
17 statements. And because Plaintiff and Class Members were not paid overtime and double-time
18 wages in compliance with California law, the number of hours listed at the overtime rate and
19 double-time rates were incorrect. Further, overtime and double-time rates were improperly
20 calculated and so improperly listed in the wage statements. As a result, the wage statements
21 that Defendants furnished to Plaintiff and other Class Members were incomplete and inaccurate
22 and failed to comply with the requirements of Labor Code section 226(a).

23 38. Defendants had a consistent policy of failing to pay Plaintiff and Class Members
24 all wages due upon separation, in violation of California state wage and hour laws. Because
25 Defendants failed to pay all minimum and overtime wages and meal and rest period premiums
26 owed during Plaintiff's and Class Members' employment, final wages paid to Plaintiff and
27 Class Members were underpaid, as they did not include these amounts.

28 39. Defendants had a consistent policy of not paying Plaintiff and Class Members

1 all vacation wages owed to them upon separation for accrued, but unused vacation time.

2 40. Defendants' violations of California law, described above, stem from
3 Defendants' centrally devised and uniformly implemented unlawful and unfair policies and
4 practices.

5 41. Plaintiff, on behalf of herself and Class Members, seeks injunctive relief,
6 restitution, and disgorgement of all benefits obtained by Defendants as a result of the violations
7 alleged. Business and Professions Code §§ 17200, *et seq.*

8 **FIRST CAUSE OF ACTION**

9 **Failure to Pay Minimum, Regular, and Overtime Wages**
10 **Labor Code §§ 510, 1194 and 1194.2; IWC Wage Order(s))**
(By Plaintiff and each Member of the Minimum Wages Subclass)

11 42. Plaintiff incorporates the preceding paragraphs of this Complaint.

12 43. By failing to pay at least minimum wages for all hours worked, Defendants
13 violated Labor Code section 1194 and the "Minimum Wages" section of the applicable IWC
14 Wage Order(s).

15 44. Labor Code section 1194.2 provides for liquidated damages equal to unlawfully
16 unpaid minimum wages, with interest.

17 45. By failing to pay correctly calculated overtime wages for hours worked in
18 excess of eight (8) in one day or forty (40) in one week and correctly calculated double-time
19 wages for hours worked in excess of twelve (12) in one day, Defendants violated Labor Code
20 sections 510 and 1194, and the "Hours and Days of Work" section of the applicable IWC Wage
21 Order(s).

22 46. Defendants' unlawful acts deprived Plaintiff, the Class, and the Minimum
23 Wages and Overtime Wages Subclasses of minimum and overtime wages in amounts to be
24 determined at trial, and they are entitled to recover these wages, liquidated damages, interest,
25 attorneys' fees, and costs.

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SECOND CAUSE OF ACTION

Failure to Provide Required Meal Periods

Labor Code §§ 226.7 and 512; IWC Wage Order(s)

(By Plaintiff and each Member of the First and Second Meal Period Subclasses)

47. Plaintiff incorporates the preceding paragraphs of this Complaint.

48. By failing to: provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work; provide second duty-free meal periods of at least thirty (30) minutes for shifts of ten hours or more, which began before the tenth hour of work; and pay premium wages of one (1) hour of pay at employees' regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated the provisions of Labor Code sections 226.7 and 512 and the "Meal Periods" section of the applicable IWC Wage Order(s).

49. Defendants' unlawful acts deprived Plaintiff, the Class, and the First and Second Meal Period Subclasses of premium wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys' fees, and costs.

THIRD CAUSE OF ACTION

Failure to Provide Required Rest Periods

Labor Code § 226.7 and IWC Wage Order(s)

(By Plaintiff and each Member of the Rest Period Subclass)

50. Plaintiff incorporates the preceding paragraphs of this Complaint.

51. By failing to authorize and permit Plaintiff and Class Members a paid rest period of at least 10 minutes for every four hours or major fraction worked per day, and by failing to provide premium wages at the regular rate of pay when not permitted or authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and the "Rest Periods" section of the applicable IWC Wage Order(s).

52. Defendants' unlawful acts deprived Plaintiff, the Class, and the Rest Period Subclass of premium wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys' fees, and costs.

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FOURTH CAUSE OF ACTION
Failure to Provide Accurate Wage Statements
Labor Code § 226
(By Plaintiff and each Member of the Wage Statement Subclass)

53. Plaintiff incorporates the preceding paragraphs of this Complaint.

54. All employers must provide employees with accurate, itemized wage statements showing, among other things, total hours worked, the employer's address, and all applicable hourly rates in effect in a pay period and the corresponding number of hours worked at each rate. Labor Code § 226.

55. Defendants knowingly failed to comply with these provisions by, among other things, failing to provide accurate itemized wage statements showing all correct total hours worked; the employer's address; all correct hourly rates and the corresponding number of hours worked at each rate; and meal and rest period premiums earned.

56. As a consequence of Defendants' knowing and intentional failure to comply with Labor Code section 226(a), Plaintiff, the Class, and Wage Statement Subclass Members are entitled to recover the greater of actual damages or penalties not to exceed \$4,000 for each employee with interest and attorneys' fees and costs. Labor Code § 226(e).

FIFTH CAUSE OF ACTION
Failure to Timely Pay Wages Due at Separation
Labor Code §§ 201-203
(By Plaintiff and each Member of the Waiting Time Subclass)

57. Plaintiff incorporates the preceding paragraphs of this Complaint.

58. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 201.

59. Because Defendants did not pay all earned wages during employment, Defendants had a consistent policy of willfully failing to timely pay earned wages to former employees. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until paid or until an action is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

60. Waiting Time Subclass Members are no longer employed by Defendants.

61. Defendants willfully failed to pay Waiting Time Subclass Members the sum due at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for thirty (30) days thereafter, entitling them to waiting time penalties.

SIXTH CAUSE OF ACTION

Failure to Maintain Accurate Records

Labor Code § 1174; IWC Wage Order(s)

(By Plaintiff and each Member of the Records Subclass)

62. Plaintiff incorporates the preceding paragraphs of this Complaint.

63. Employers must maintain payroll records showing each employee's total daily hours worked and wages paid for at least three years. Labor Code § 1174. The "Records" section of the applicable IWC Wage Order(s) require employers to maintain accurate information about each employee's time records, including when the employee begins and ends each work period and meal period and the total daily hours worked.

64. Defendants knowingly failed to comply with these provisions by, among other things, failing to accurately record employees' total daily hours worked and when they began and ended their work and meal periods.

65. Defendants' unlawful acts damaged Plaintiff, the Class, and the Records Subclass in amounts to be determined at trial, and they are entitled to recover these amounts, along with interest, attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION

Failure to Pay Vacation Wages

Labor Code § 1174; IWC Wage Order(s)

(By Plaintiff and each Member of the Vacation Wages Subclass)

66. Plaintiff incorporates the preceding paragraphs of this Complaint.

67. By failing to pay all vacation wages to Plaintiff and Class Members upon separation for accrued, but unused vacation time, Defendants violated Labor Code section 227.3.

68. Defendants' unlawful acts damaged Plaintiff, the Class, and the Vacation Wages Subclass in amounts to be determined at trial, and they are entitled to recover these amounts,

1 along with interest, attorneys' fees, and costs.

2 **EIGHTH CAUSE OF ACTION**
3 **Violation of the Unfair Competition Law**
4 **Bus. & Prof. Code §§ 17200 *et seq.***
5 **(By Plaintiff and each Member of the UCL Subclass)**

6 69. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 70. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
8 sections 17200, *et seq.*, defines unfair competition to include any "unlawful," "unfair," or
9 "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

10 71. Defendants' conduct constitutes unlawful business practices because Defendants
11 violated the California Labor Code, including but not limited to sections 226.7 (meal and rest),
12 227.3 (vacation wages), and 510 and 1194 (minimum and overtime wages), and sections of the
13 applicable Wage Order(s).

14 72. Defendants' conduct constitutes unfair business practices because their denial of
15 lawfully earned wages outweighs any utility of such practices.

16 73. As a result of Defendants' unlawful and unfair conduct, Plaintiff and Class
17 Members suffered injury in fact.

18 74. Plaintiff and Class Members seek declaratory and injunctive relief, restitution,
19 and other appropriate equitable relief. Bus. & Prof. Code §§ 17203, 17204.

20 75. Plaintiff and the proposed Class are entitled to recover reasonable attorneys'
21 fees and costs incurred in bringing this action. Code of Civil Procedure § 1021.5.

22 76. This cause of action is brought as a cumulative remedy and is intended as an
23 alternative remedy for restitution for Plaintiff, and each Subclass Member, for the four (4) year
24 period before the Complaint filing, and as the primary remedy during the fourth year before the
25 Complaint filing. Business and Professions Code § 17205.

26 **NINTH CAUSE OF ACTION**
27 **PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages**
28 **(By Plaintiff and Aggrieved Employees)**

77. Plaintiff incorporates the preceding paragraphs of this Complaint.

78. "Notwithstanding any agreement to work for a lesser wage, any employee

1 receiving less than the legal minimum wage or the legal overtime compensation applicable to
2 the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
3 minimum wage or overtime compensation, including interest thereon, reasonable attorney's
4 fees, and costs of suit." Labor Code § 1194(a).

5 79. "[A]ny provision of this code that provides for a civil penalty to be assessed and
6 collected by the Labor and Workforce Development Agency or any of its departments,
7 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an
8 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
9 himself or herself and other current or former employees pursuant to the procedures specified
10 in Section 2699.3." Labor Code § 2699(a).

11 80. "For all provisions of this code except those for which a civil penalty is
12 specifically provided, there is established a civil penalty for a violation of these provisions []
13 (2) If, at the time of the alleged violation, the person employs one or more employees, the civil
14 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
15 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
16 subsequent violation." Labor Code § 2699(f)(2).

17 81. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510,
18 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

19 82. Defendants failed to pay minimum, regular, and overtime wages during the
20 PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid,
21 and \$200 for each subsequent violation.

22 83. Defendants' conduct violates the applicable Wage Order(s) by failing to pay
23 minimum wages to employees. Plaintiff will also seek \$50 for the initial pay period an
24 employee was underpaid, and \$100 for each subsequent violation.

25 **TENTH CAUSE OF ACTION**
26 **PAGA Civil Penalties for Failure to Provide Meal Periods**
27 **(By Plaintiff and Aggrieved Employees)**

28 84. Plaintiff incorporates the preceding paragraphs of this Complaint.

85. By failing to provide uninterrupted meal periods of at least 30 minutes for shifts

1 of five hours or more, which began before the end of the fifth hour of work, and a second meal
2 period at least 30 minutes for shifts of ten hours or more, which began before the end of the
3 tenth hour of work, Defendants willfully violated Labor Code sections 226.7 and 512 and the
4 applicable Wage Order(s).

5 86. By failing to pay employees one hour of pay at their regular rate of
6 compensation for each workday a meal period was not provided, Defendants willfully violated
7 Labor Code sections 226.7 and 512, and the applicable Wage Order(s).

8 87. During the PAGA Period, Defendants failed to provide compliant meal periods.
9 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
10 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

11 **ELEVENTH CAUSE OF ACTION**

12 **PAGA Civil Penalties for Failure to Authorize or Permit Paid Rest Periods**
13 **(By Plaintiff and Aggrieved Employees)**

14 88. Plaintiff incorporates the preceding paragraphs of this Complaint.

15 89. By failing to authorize and permit a rest period of at least 10 minutes for every
16 four (4) hours or major fraction thereof worked per day, Defendants willfully violated
17 provisions of Labor Code section 226.7 and the applicable Wage Order(s).

18 90. By failing to pay employees one hour of pay at their regular rate of
19 compensation for each day a compliant rest period was not authorized and permitted,
20 Defendants willfully violated the provisions of Labor Code section 226.7 and the applicable
21 Wage Order(s).

22 91. During the applicable statutory period, Defendants failed to provide rest periods.
23 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
24 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

25 **TWELFTH CAUSE OF ACTION**

26 **PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements**
27 **(By Plaintiff and Aggrieved Employees)**

28 92. Plaintiff incorporates the preceding paragraphs of this Complaint.

93. Every employer must, semimonthly or at the time of each payment of wages,
furnish each of its employees an accurate itemized statement in writing showing, among other

things, total hours worked, the employer's address, and all applicable hourly rates in effect in a pay period and the corresponding number of hours worked at each rate. Labor Code § 226.

94. Defendants violated Section 226 by providing wage statements to employees that did not accurately reflect all required information, including but not limited to all correct total hours worked, the employer's address, all correct hourly rates and the corresponding number of hours worked at each rate and meal and rest period premiums earned

95. Labor Code section 226.3 provides for civil penalties for violations of Section 226. Plaintiff seeks civil penalties of \$250 for the initial violation and \$1,000 for each subsequent violation. Labor Code § 226.3.

THIRTEENTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Timely Pay Wages Due at Separation
(By Plaintiff and Aggrieved Employees)

96. Plaintiff incorporates the preceding paragraphs of this Complaint.

97. Labor Code sections 201-202 require employers to pay wages earned by employees within certain times. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' former employees. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee's wages for 30 days, or until back wages are paid in full. Labor Code § 203.

98. Defendants failed to pay Plaintiff and other aggrieved employees all final wages, including minimum, regular, and overtime wages, and meal and rest period premium wages, as required by Labor Code sections 201-202.

99. Defendants failed to pay Plaintiff and other aggrieved employees penalties due them based on Defendants' failure to pay all final wages in a timely manner as required by Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation.

FOURTEENTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Maintain Accurate Records
(By Plaintiff and Aggrieved Employees)

100. Plaintiff incorporates the preceding paragraphs of this Complaint.

101. Defendants violated Labor Code sections 1174 and 1174.5, and the IWC Wage

1 Orders, by failing to maintain accurate wage statement records, including all hours worked and
2 wages paid at the appropriate rate to Plaintiff and aggrieved employees during the PAGA
3 Period.

4 102. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties
5 and other recoverable amounts under the foregoing sections of the Labor Code, in addition to
6 under Labor Code section 2699(f), which provides a penalty for those provisions of the Labor
7 Code for which a civil penalty is not specifically provided.

8 **FIFTHTEENTH CAUSE OF ACTION**
9 **PAGA Civil Penalties for Failure to Pay Vacation Wages**
10 **(By Plaintiff and Aggrieved Employees)**

11 103. Plaintiff incorporates the preceding paragraphs of this Complaint.

12 104. Labor Code section 227.3 states: “Unless otherwise provided by a collective-
13 bargaining agreement, whenever a contract of employment or employer policy provides for
14 paid vacations, and an employee is terminated without having taken off his vested vacation
15 time, all vested vacation shall be paid to him as wages at his final rate in accordance with such
16 contract of employment or employer policy respecting eligibility or time served; provided,
17 however, that an employment contract or employer policy shall not provide for forfeiture of
18 vested vacation time upon termination.”

19 105. Defendants failed to pay Plaintiff and other aggrieved employees all vacation
20 wages earned and accrued upon termination of employment.

21 106. Defendants’ conduct violates Labor Code section 227.3

22 107. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
23 Labor Code for which there is no corresponding civil penalty, including Labor Code section
24 227.3. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
25 for each underpaid employee. Labor Code § 2699(f)(2).

26 **PRAYER FOR RELIEF**

27 Plaintiff prays for the following relief on behalf of herself and the Plaintiff Class
28 against Defendants:

1. Certification of this action as a class action and appointment of Plaintiff and

1 Plaintiff's counsel to represent the Plaintiff Class;

2 2. Provision of class notice to Class Members as defined above;

3 3. A declaratory judgment that Defendants knowingly and intentionally violated:

4 a. California Labor Code sections 510 and 1194 by failing to pay
5 minimum and overtime wages;

6 b. California Labor Code sections 226.7 and 512 by failing to provide
7 meal and rest periods;

8 c. California Labor Code section 226 by failing to provide accurate,
9 itemized wage statements;

10 d. California Labor Code section 203 by failing to pay waiting time
11 penalties;

12 e. California Labor Code section 227.3 by failing to pay vacation
13 wages;

14 f. California Labor Code section 1174 by failing to maintain accurate
15 records; and

16 g. California Business and Professions Code sections 17200, *et seq.*
17 by engaging in unlawful or unfair business practices.

18 4. That Defendants be permanently enjoined from engaging in the unlawful or
19 unfair acts and practices alleged;

20 5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff
21 and Class Members, in an amount according to proof, pursuant to California Business and
22 Professions Code section 17203;

23 6. Compensatory damages according to proof;

24 7. Statutory damages as provided under the Labor Code;

25 8. Liquidated damages as provided under the Labor Code;

26 9. Pre-judgment interest on all sums collected;

27 10. Reasonable attorneys' fees and costs, pursuant to California Code of Civil
28 Procedure section 1021.5, and the California Labor Code, or other applicable law;

1 11. This action be maintained as a PAGA Representative Action, and Plaintiff and
2 her counsel be provided with enforcement capability as if the action were brought by the
3 DLSE;

4 12. For recovery of civil penalties under Labor Code section 2699 for failure to pay
5 all minimum, regular, and overtime wages owed pursuant to Sections 512 and 1194, according
6 to proof;

7 13. For recovery of all civil penalties as permitted by Labor Code section 2699 for
8 unpaid vacation wages owed pursuant to Labor Code section 227.3, in an amount according to
9 proof;

10 14. For recovery of civil penalties as permitted by Labor Code sections 1174 and
11 1174.5 for failing to maintain records, according to proof;

12 15. For recovery of civil penalties under Labor Code section 2699 for failure to
13 provide meal periods compliant with Labor Code sections 226.7 and 512, according to proof;

14 16. For recovery of civil penalties under Labor Code section 2699 for failure to pay
15 all meal period premiums due pursuant to Labor Code section 226.7, according to proof;

16 17. For recovery of civil penalties under Labor Code section 2699 for failure to
17 authorize and permit rest periods, pursuant to Labor Code section 226.7(a), according to proof;

18 18. For recovery of civil penalties under Labor Code section 2699 for failure to pay
19 all rest period premiums due pursuant to Labor Code section 226.7(b), according to proof;

20 19. For recovery of civil penalties under Labor Code section 2699 for failing to
21 provide accurate itemized wage statements pursuant to Labor Code sections 226 and 226.3,
22 according to proof;

23 20. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
24 timely pay all final wages (and waiting time penalties) on time each pay period or upon
25 termination of employment pursuant to Labor Code sections 201-203;

26 21. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
27 pay statutory waiting time penalties due pursuant to Labor Code section 203;

28 22. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to

1 the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i).

2 23. Costs of suit; and

3 24. Such other relief as the Court may deem appropriate.

4 COHELAN KHOURY & SINGER
5 STONEBROOK LAW

6 Dated: June 7, 2021

7 By:


Michael D. Singer, Esq.
Jeff Geraci, Esq.

8 Attorneys for Plaintiff Nancy Mbakata, on behalf
9 of herself and all others similarly situated

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands a jury trial of all claims triable as of right by jury.

12 COHELAN KHOURY & SINGER
13 STONEBROOK LAW

14 Dated: June 7, 2021

15 By:


Michael D. Singer, Esq.
Jeff Geraci, Esq.

16 Attorneys for Plaintiff Nancy Mbakata, on behalf
17 of herself and all others similarly situated
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EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
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ROSEMARY C. KHOURY

(† Also admitted in Illinois)

March 23, 2021

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified U.S. Mail with Return Receipt

One Click Care LLC
Royal Palms Post Acute, LLC
Beecan Health LLC
1267 Willis St., Suite 200
Redding, CA 96001

Re: Notice by Nancy Mbakata, on behalf of herself and all similarly-aggrieved California employees of One Click Care, LLC, Royal Palms Post Acute, LLC, and/or Beecan Health LLC, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator:

Nancy Mbakata ("Claimant") intends to bring a Private Attorneys General Act ("PAGA") action against One Click Care, LLC, Royal Palms Post Acute, LLC, and/or Beecan Health LLC (collectively, "the Employers") on behalf of all other aggrieved employees. In this notice, "aggrieved employees" means all non-exempt California employees subject to the policies and practices described below, including, but not limited to, certified nursing assistants.

Factual Statement

Nancy Mbakata worked for the Employers from October 9, 2020 through January 8, 2021 at the Royal Palms Post Acute long-term care facility in Glendale, California as a certified nursing assistant ("CNA"). As a CNA, Ms. Mbakata was responsible for caring for patients, including by checking their vital signs, adjusting their positions, feeding them, bathing them, brushing their hair and trimming their nails, and helping them to use the restroom and to walk. Ms. Mbakata was required to chart all of her patient-care activities and her patients' vital signs using a tablet.

The Employers typically scheduled Ms. Mbakata to work sixteen-hour shifts, five days per week. Her shifts would most often spanned from one day to the next. Ms. Mbakata observed that other CNAs had similar schedules. Understaffing was a problem throughout Claimant's

employment. At times, up to 110 patients resided in the facility, but only five to ten CNAs were scheduled by the Employers to care for these patients.

The Employers failed to pay Claimant and aggrieved employees minimum, regular, and overtime wages because they were paid based on inaccurate time records. The Employers did not pay any wages for time Claimant and aggrieved employees spent attending briefings before clocking in and filling out patients' charts after clocking out. The Employers also failed to pay Claimant and aggrieved employees a sign-up bonus and five additional dollars (\$5) per hour in Covid hazard pay, despite these benefits being listed in the "Beecan Health" job advertisement to which Claimant responded.

The Employers failed to pay overtime wages for all hours worked over eight in one day and/or forty in one week and double-time wages for all hours worked over twelve in one day and/or over eight on the seventh consecutive day of work. Additionally, overtime and double-time wages were paid at inaccurate rates because the Employers failed to include non-discretionary bonuses and other applicable compensation in Claimant's and aggrieved employees' regular rates of pay for the purpose of calculating overtime and double-time pay.

The Employers failed to provide Claimant and aggrieved employees 30-minute, off-duty meal periods before the end of the fifth hour of work, and second such meal periods before the end of the tenth hour of work. Due to understaffing, Claimant's and aggrieved employees' meal periods were most often missed, late, or interrupted. Additionally, Claimant and aggrieved employees could not leave the premises during meal periods because they would be reprimanded if their patients needed them and they were not nearby. It was also not possible for Claimant and aggrieved employees to be relieved of all duties for full 10-minute rest periods for every four hours, or major fraction thereof, worked.

Wage statements issued to Claimant and aggrieved employees by One Click Care LLC did not display the correct total hours worked, the employer's address, nor the correct number of hours worked at each hourly rate. The total hours worked were incorrectly listed because the Employers added fabricated hours to Claimant's and aggrieved employees' wage statements to make it appear as though there were enough CNAs working at one time to satisfy the Health Department's patient care requirements. No employer address was listed on the wage statements. And because Claimant and aggrieved employees were not paid overtime and double-time wages in compliance with California law, the number of hours listed at the overtime rate and those listed at the double-time rate were incorrect.

Additionally, the Employers failed to pay Claimant and other aggrieved employees vacation wages for their accrued, unused vacation time upon separation.

Because the Employers' failed to pay all minimum, regular, overtime, double-time, vacation, and other promised wages owed to Claimant and aggrieved employees during their employment, the final wages paid to these employees were also deficient.

Summarizing the claims on behalf of Ms. Mbakata and all other aggrieved employees of the Employers, the Employers failed to:

1. Pay minimum, regular, and overtime wages at the correct rate;
2. Provide meal periods;
3. Authorize and permit rest periods;
4. Provide compliant wage statements;
5. Pay accrued, but unused vacation wages owed at separation from employment; and
6. Timely pay all wages owed at separation from employment.

MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 510, and 1194)

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

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

Claimants and other aggrieved employees were not paid minimum, regular, or overtime wages, where applicable, for all hours worked because they were paid based on inaccurate time records. These time records did not reflect all time actually worked, including time worked before and after clocking in and time that employees were required to remain on premises while clocked out during meal breaks, which was time spent under the control of the Employers.

Claimants and other aggrieved employees were also not paid all overtime and double-time wages owed to them. To the extent overtime and double-time wages were paid, they were underpaid because the Employers failed to include non-discretionary bonuses and other applicable compensation in Claimant’s and aggrieved employees’ regular rates of pay.

MEAL AND REST PERIOD PREMIUM WAGES

(Labor Code §§ 512 and 226.7 and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the

employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. . . .”

The “Rest Period” Section of applicable IWC Wage Order states in pertinent part: “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 shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Labor Code section 226.7(b) states: “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...”

Labor Code section 226.7(c) states: “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.”

The Employers failed to provide compliant meal periods because Claimant’s and aggrieved employees’ meal breaks were missed, late, short, and/or required to be taken on the premises. The Employers also failed to provide compliant rest periods. Furthermore, the Employers failed to pay one (1) hour of pay at the employee’s regular rate of compensation for each workday that a meal and/or rest period was not provided, in accordance with California law.

WAGE STATEMENTS (Labor Code §§ 226 and 1174)

California employers are required to provide itemized wage statements showing, among other things, the “total hours worked by the employee,” “the...address of the legal entity that is the employer,” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2), (9). California employers must maintain accurate “payroll records showing the hours worked daily by and the wages paid to” employees. Labor Code § 1174(d).

As alleged herein, the Employers had a policy and practice of providing wage statements that did not show the correct total number of hours worked, the address of the employer, and all hourly rates in effect each pay period and the number of hours worked at each rate. The Employers thus failed to provide accurate itemized wage statements and failed to maintain accurate payroll records showing the daily hours worked by, and wages paid to, Claimant and aggrieved employees.

CA Labor & Workforce Development Agency
One Click Care LLC, Royal Palms Post Acute, LLC, and Beecan Health LLC
Re: Nancy Mbakata
March 23, 2021
Page 5

VACATION WAGES
(Labor Code § 227.3)

An employer must pay its separated employees all vested but unused vacation time as wages at the employee's final rate of pay. Labor Code § 227.3

The Employers failed to pay Claimant and aggrieved employees for their vested, but unused vacation time upon separation.

FINAL WAGES
(Labor Code §§ 201-203)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Labor Code § 201. If an employer willfully fails to timely pay all final wages, the wages continue at the same rate for up to 30 days, until paid. Labor Code §§ 201-203.

As a result of their failure to pay all wages earned described above, the Employers failed to pay all final wages due to Claimant and other aggrieved employees and violated Sections 201-203.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above against the Employers. If the LWDA does not pursue enforcement, Ms. Mbakata will pursue claims for statutory penalties and seek all remedies available for the Employers' violations of the Labor Code and applicable Industrial Welfare Commission Wage Order, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER


Rosemary C. Khoury, Esq.

cc (via email only):
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