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Superior Court of California
County of Los Angeles

SEP 14 2021

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and all other aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

NANCY MBAKATA, on behalf of herself
and all other aggrieved employees

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

**SECOND AMENDED REPRESENTATIVE
ACTION COMPLAINT**

1. Civil Penalties Under the PAGA for Failure to Pay Minimum, Regular and Overtime Wages
2. Civil Penalties Under the PAGA for Failure to Provide Meal Periods
3. Civil Penalties Under the PAGA for Failure to Authorize or Permit Paid Rest Periods
4. Civil Penalties Under the PAGA for Failure to Provide Accurate Itemized Wage Statements
5. Civil Penalties Under the PAGA for Failure to Timely Pay Wages Due at Separation

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- 6. Civil Penalties Under the PAGA for Failure to Maintain Accurate Records
- 7. Civil Penalties Under the PAGA for Failure to Pay Vacation Wages

NATURE OF CLAIM

1. Plaintiff NANCY MBAKATA (“Plaintiff”) brings this representative action on behalf of herself and other aggrieved 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 civil penalties under California’s Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*, for Defendants’ unlawful employment policies that denied, and continue to deny, the aggrieved employees of wages and benefits to which they are lawfully entitled.

2. 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 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

3. 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.

4. 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.

5. Defendant ROYAL PALMS POST ACUTE, LLC is a California Limited Liability Company. ROYAL PALMS POST ACUTE, LLC operates the Royal Palms Post Acute long-term care facility where Plaintiff worked.

6. Defendant BEECAN HEALTH LLC is a California limited liability company. BEECAN HEALTH LLC was the entity listed on the CNA job posting to which Plaintiff responded. BEECAN HEALTH LLC provides a variety of services to skilled nursing facilities,

1 assisted living homes, and other healthcare industry sectors throughout Southern California,
2 including recruitment.

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

11 **JURISDICTION AND VENUE**

12 8. Venue as to each Defendant is proper in this judicial district. Code of Civil
13 Procedure § 395. Defendants conduct business in Los Angeles County and each Defendant is
14 within the Court's jurisdiction for service of process. The unlawful acts alleged have a direct
15 effect on Plaintiff and other aggrieved employees within Los Angeles County and California.

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

19 10. As a PAGA action, this matter is not subject to removal. 28 U.S.C. § 1332(a)-
20 (d).

21 **FACTUAL ALLEGATIONS**

22 11. At all relevant times, Plaintiff and other aggrieved employees were employed by
23 Defendants in California, and Defendants conducted business in California.

24 12. Defendants failed to pay Plaintiff and other aggrieved employees all minimum,
25 regular, and overtime wages for all hours worked or under the Defendants' control.

26 13. Defendants did not pay any wages to Plaintiff and other aggrieved employees
27 for time they worked or were under Defendants' control off-the-clock, including time spent
28 attending briefings, filling out patients' charts, and working during meal periods. To the extent

1 this time was overtime or double-time, Defendants failed to pay overtime and double-time
2 wages.

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

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

19 16. Defendants had a consistent policy which did not authorize or permit Plaintiff
20 and other aggrieved employees to receive duty-free rest periods of at least ten (10) minutes per
21 four (4) hours, or major fraction, worked, and failed to pay such employees one (1) hour of pay
22 at their regular rate of compensation for each workday a rest period was not authorized or
23 permitted, as required by California wage and hour laws. Furthermore, Plaintiff and other
24 aggrieved employees regularly worked shifts over 10 hours per day and were not provided with
25 a third duty-free rest period of 10-minutes for each shift over 10 hours.

26 17. Defendants consistently and knowingly failed to provide accurate itemized wage
27 statements to Plaintiff and other aggrieved employees. Wage statements issued by Defendants
28 did not include, among other things, the correct total hours worked, the employer's address, nor

1 the correct number of hours worked at each hourly rate. The total hours worked were
2 incorrectly listed because off-the-clock time spent under Defendants' control was not included.
3 Further, Defendants added fabricated hours to Plaintiff's and other aggrieved employees' wage
4 statements to make it appear as though there were enough CNAs working at one time to satisfy
5 the Health Department's patient care requirements. No employer address was listed on the
6 wage statements. And because Plaintiff and other aggrieved employees were not paid overtime
7 and double-time wages in compliance with California law, the number of hours listed at the
8 overtime rate and double-time rates were incorrect. Further, overtime and double-time rates
9 were improperly calculated and so improperly listed in the wage statements. As a result, the
10 wage statements that Defendants furnished to Plaintiff and other aggrieved employees were
11 incomplete and inaccurate and failed to comply with the requirements of Labor Code section
12 226(a).

13 18. Defendants had a consistent policy of failing to pay Plaintiff and other aggrieved
14 employees all wages due upon separation, in violation of California state wage and hour laws.
15 Because Defendants failed to pay all minimum and overtime wages and meal and rest period
16 premiums owed during Plaintiff's and other aggrieved employees' employment, final wages
17 paid to Plaintiff and other aggrieved employees were underpaid, as they did not include these
18 amounts.

19 19. Defendants had a consistent policy of not paying Plaintiff and other aggrieved
20 employees all vacation wages owed to them upon separation for accrued, but unused vacation
21 time.

22 **FIRST CAUSE OF ACTION**
23 **PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages**
24 **(By Plaintiff and Aggrieved Employees)**

25 20. Plaintiff incorporates the preceding paragraphs of this Complaint.

26 21. "Notwithstanding any agreement to work for a lesser wage, any employee
27 receiving less than the legal minimum wage or the legal overtime compensation applicable to
28 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

1 fees, and costs of suit.” Labor Code § 1194(a).

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

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

14 24. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510,
15 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

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

19 26. Defendants’ conduct violates the applicable Wage Order(s) by failing to pay
20 minimum wages to employees. Plaintiff will also seek \$50 for the initial pay period an
21 employee was underpaid, and \$100 for each subsequent violation.

22 **SECOND CAUSE OF ACTION**
23 **PAGA Civil Penalties for Failure to Provide Meal Periods**
24 **(By Plaintiff and Aggrieved Employees)**

25 27. Plaintiff incorporates the preceding paragraphs of this Complaint.

26 28. By failing to provide uninterrupted meal periods of at least 30 minutes for shifts
27 of five hours or more, which began before the end of the fifth hour of work, and a second meal
28 period at least 30 minutes for shifts of ten hours or more, which began before the end of the
tenth hour of work, Defendants willfully violated Labor Code sections 226.7 and 512 and the

1 applicable Wage Order(s).

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

5 30. During the PAGA Period, Defendants failed to provide compliant meal periods.
6 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
7 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

8 **THIRD CAUSE OF ACTION**

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

10 31. Plaintiff incorporates the preceding paragraphs of this Complaint.

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

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

18 34. During the applicable statutory period, Defendants failed to provide rest periods.
19 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
20 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

21 **FOURTH CAUSE OF ACTION**

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

23 35. Plaintiff incorporates the preceding paragraphs of this Complaint.

24 36. Every employer must, semimonthly or at the time of each payment of wages,
25 furnish each of its employees an accurate itemized statement in writing showing, among other
26 things, total hours worked, the employer's address, and all applicable hourly rates in effect in a
27 pay period and the corresponding number of hours worked at each rate. Labor Code § 226.

28 37. Defendants violated Section 226 by providing wage statements to employees

1 that did not accurately reflect all required information, including but not limited to all correct
2 total hours worked, the employer's address, all correct hourly rates and the corresponding
3 number of hours worked at each rate and meal and rest period premiums earned

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

7 **FIFTH CAUSE OF ACTION**

8 **PAGA Civil Penalties for Failure to Timely Pay Wages Due at Separation**
9 **(By Plaintiff and Aggrieved Employees)**

10 39. Plaintiff incorporates the preceding paragraphs of this Complaint.

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

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

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

23 **SIXTH CAUSE OF ACTION**

24 **PAGA Civil Penalties for Failure to Maintain Accurate Records**
25 **(By Plaintiff and Aggrieved Employees)**

26 43. Plaintiff incorporates the preceding paragraphs of this Complaint.

27 44. Defendants violated Labor Code sections 1174 and 1174.5, and the IWC Wage
28 Orders, by failing to maintain accurate wage statement records, including all hours worked and
wages paid at the appropriate rate to Plaintiff and aggrieved employees during the PAGA
Period.

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

SEVENTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Pay Vacation Wages
(By Plaintiff and Aggrieved Employees)

46. Plaintiff incorporates the preceding paragraphs of this Complaint.

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

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

49. Defendants’ conduct violates Labor Code section 227.3

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

PRAYER FOR RELIEF

Plaintiff prays for the following relief on behalf of herself and all other aggrieved employees, and as a Representative of the Labor and Workforce Development Agency, against Defendants:

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

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

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

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

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

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

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

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

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

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

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

12. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i);

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13. Costs of suit; and
14. Such other relief as the Court may deem appropriate.

COHELAN KHOURY & SINGER
STONEBROOK LAW

Dated: September 14, 2021

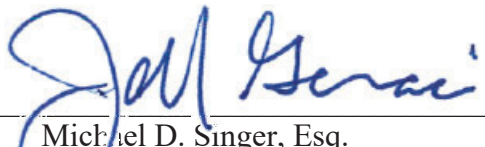
By: 
Michael D. Singer, Esq.
Jeff Geraci, Esq.
Attorneys for Plaintiff Nancy Mbakata, on behalf
of herself and all other aggrieved employees

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
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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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Amber Worden

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Tuesday, March 23, 2021 3:54 PM
To: Amber Worden
Subject: [External] Thank you for submission of your PAGA Case.

3/23/2021

LWDA Case No. LWDA-CM-826796-21
Law Firm : Cohelan Khoury & Singer
Plaintiff Name : Nancy Mbakata
Employer: One Click Care LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://urldefense.proofpoint.com/v2/url?u=http-3A__labor.ca.gov_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwICaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=1sYpYEGF76QN6w9hehxsqElpMNt5gOV6_IRPmxDj0Ew&m=AjWlbGf__Rkls2kh-JYbEI8JS85MRc2lmHO09G-xizA&s=YDiw6K5_BSC3J0zO4DjBLF21_pu6bP3Dcu5BZLSOito&e=

1 **PROOF OF SERVICE**

2 *Mbakata v. One Click Care LLC, et al.*

3 L.A.S.C. Case No. 21STCV14514

4 I, Matthew Atlas, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not
6 a party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.
7 On September 14, 2021, I caused to be served a copy of foregoing document(s):

8 **SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT**

9 on the following interested parties in this action by transmitting such document(s) electronically via

10 CASE ANYWHERE:

11 **Counsel for Defendants**

12 Krista M. Cabrera, Esq.
13 Kevin Jackson, Esq.
14 FOLEY & LARDNER LLP
15 11988 El Camino Real, Suite 400
16 San Diego, CA 92130-2594
17 kcabrera@foley.com
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Co-counsel for Plaintiff

Joseph Tojarieh, Esq.
STONEBROOK LAW
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Los Angeles, CA 90067
jft@stonebrooklaw.com

16 [XX] STATE: I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed September 14, 2021, at San Diego, California:

19 
20 Matthew Atlas