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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

CATHERINE ZULU, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

FRONT PORCH COMMUNITIES AND
SERVICES, a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. **21CV386663**

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,
221, 226(a), 226.7, 246, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B)

1 Plaintiff Catherine Zulu (“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 her own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Front Porch Communities and
8 Services (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for
9 herself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does not seek to recover anything other than penalties as
11 permitted by California Labor Code § 2699. To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

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

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

23 THE PARTIES

24 4. Defendant Front Porch Communities and Services (“DEFENDANT”) is a
25 California Corporation that at all relevant times mentioned herein conducted and continues to
26 conduct substantial business in the state of California.

27 5. DEFENDANT offers nursing, continuing care retirement communities, and
28

1 residential care facilities to older adults.

2 6. PLAINTIFF was employed by DEFENDANT in California from September of
3 2019 until 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 herself
9 and all individuals who are or previously were employed by DEFENDANT in California and
10 who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
11 time period of April 22, 2020 until a date as determined by the Court (the "PAGA PERIOD").

12 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 246,
16 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
17 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon
18 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
19 within the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
27 responsible in some manner for one or more of the events and happenings that proximately
28 caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Additionally, before clocking in, PLAINTIFF and the AGGRIEVED EMPLOYEES, were required to wait in-line for a COVID-19 screening, one which included questions about their current set of symptoms before each employee was scanned and screened for a fever. PLAINTIFF was not allowed to clock in until this process was completed. Also, DEFENDANT, as a matter of established company policy and procedure, administered a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. DEFENDANT's policy and practice not

1 to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, is
2 evidenced by DEFENDANT's business records. As a result, DEFENDANT failed to pay
3 PLAINTIFF and the other AGGRIEVED EMPLOYEES the proper minimum and overtime
4 wages.

5 12. State law provides that employees must be paid overtime and meal and rest break
6 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
8 tied to specific elements of an employee's performance.

9 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
10 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
11 and the other AGGRIEVED EMPLOYEES incentive wages based on their performance for
12 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
13 hourly basis with incentive compensation when the employees met the various performance
14 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
15 overtime and premiums for meal and rest break violations to PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
17 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
18 premium pay for meal and rest break violations. As a matter of law, the incentive compensation
19 received by PLAINTIFF and the other AGGRIEVED EMPLOYEES must be included in the
20 "regular rate of pay." The failure to do so has resulted in an underpayment of overtime
21 compensation and meal and rest break premium pay to PLAINTIFF and the other AGGRIEVED
22 EMPLOYEES by DEFENDANT.

23 14. DEFENDANT underpaid sick pay wages to PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay.
25 Specifically, PLAINTIFF and other non-exempt employees regularly earn non-discretionary
26 remuneration, including but not limited to, incentives, shift differential pay, and bonuses.
27 Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
28 PLAINTIFF and the other AGGRIEVED EMPLOYEES at their base rates of pay.

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

11 16. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
12 were also required from time to time to work in excess of four (4) hours without being provided
13 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
14 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
15 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
16 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
17 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
18 PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with one hour wages
19 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
20 provide employees with off-duty rest periods, which the California Supreme Court defined as
21 time during which an employee is relieved from all work related duties and free from employer
22 control. In so doing, the Court held that the requirement under California law that employers
23 authorize and permit all employees to take rest period means that employers must relieve
24 employees of all duties and relinquish control over how employees spend their time which
25 includes control over the locations where employees may take their rest period. Employers
26 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
27 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
28 EMPLOYEES from unconstrained walks and was unlawful based on DEFENDANT's rule

1 which stated PLAINTIFF and the AGGRIEVED EMPLOYEES could not leave the work
2 premises during their rest period. As a result of PLAINTIFF being required to be present on
3 the premises she was from time to time required by DEFENDANT to work during what should
4 of been her off duty rest period.

5 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
6 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
7 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
8 DEFENDANT is required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for
9 all time worked, meaning the time during which an employee was subject to the control of an
10 employer, including all the time the employee was permitted or suffered to permit this work.
11 DEFENDANT required these employees to work off the clock without paying them for all the
12 time they were under DEFENDANT's control. Specifically, PLAINTIFF worked through her
13 various meal and rest breaks as she was often interrupted by clients and their immediate needs.
14 This work also was done off-the-clock. PLAINTIFF and the AGGRIEVED EMPLOYEES also
15 worked off the clock with respect to time spent undergoing mandatory drug testing or any other
16 testing and/or examination required as a condition of employment. As such, DEFENDANT
17 knew or should have known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were
18 under compensated for all time worked. As a result, PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES forfeited time worked by working without their time being accurately recorded
20 and without compensation at the applicable minimum wage and overtime wage rates. To the
21 extent that the time worked off the clock did not qualify for overtime premium payment,
22 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of
23 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

24 18. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
26 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
27 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
28 2802, employers are required to indemnify employees for all expenses incurred in the course

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

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

15 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
16 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
17 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
18 provides that every employer shall furnish each of his or her employees with an accurate
19 itemized wage statement in writing showing, among other things, gross wages earned and all
20 applicable hourly rates in effect during the pay period and the corresponding amount of time
21 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
22 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
23 during the pay period and the total hours worked, and the applicable pay period in which the
24 wages were earned pursuant to California Labor Code Section 226(a)(2). The wage
25 statements DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES
26 failed to identify such information. More specifically, the wage statements failed to identify
27 the accurate total hours worked each pay period. When the hours shown on the wage
28 statements were added up, they did not equal the actual total hours worked during the pay

1 period. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
2 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code
3 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
4 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

5 21. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
6 to collect or receive from an employee any part of wages theretofore paid by said employer
7 to said employee.” DEFENDANT fails to pay all compensation due to PLAINTIFF and the
8 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
9 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
10 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
11 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable
12 pay period and upon termination. PLAINTIFF and the AGGRIEVED EMPLOYEES seek
13 recovery of all illegal deductions from wages according to proof, related penalties, interest,
14 attorney fees and costs.

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

22 23. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
24 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
25 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT
26 is intended to purposefully avoid the payment for all time worked as required by California
27 law which allows DEFENDANT to illegally profit and gain an unfair advantage over
28 competitors who complied with the law. To the extent equitable tolling operates to toll

1 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
2 should be adjusted accordingly.

3 24. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
4 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which
5 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and
6 the other AGGRIEVED EMPLOYEES. The proper recording of these employees' missed
7 meal and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's
8 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
9 calculate and/or pay all required compensation for work performed by the AGGRIEVED
10 EMPLOYEES and violated the California Labor Code and regulations promulgated
11 thereunder as herein alleged.

12 25. All of the conduct and violations alleged herein occurred during the PAGA
13 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
14 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
15 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
16 2018 AJDAR 12157 (Certified for Publication 12/19/18).

17
18 **JURISDICTION AND VENUE**

19 26. This Court has jurisdiction over this Action pursuant to California Code of
20 Civil Procedure, Section 410.10.

21 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
23 employs AGGRIEVED EMPLOYEES across California, including in this County, and
24 committed the wrongful conduct herein alleged in this County against AGGRIEVED
25 EMPLOYEES.

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1 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
2 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 32. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
6 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
7 (d) failed to pay overtime and sick pay wages, (e) failed to reimburse employees for required
8 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
9 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
10 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
11 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
12 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
13 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
14 Attorney General Act of 2004 as the representative of the State of California for the illegal
15 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
19 severally, as follows:

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

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

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

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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 Dated: September 14, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

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3 By: /s/ Norman Blumenthal
4 Norman B. Blumenthal
5 Attorneys for Plaintiff
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