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ALAMEDA COUNTY

September 01, 2021

CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy

CASE NUMBER:

RG21111905

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2 Caroline N. Cohen (SBN 278154)
3 Jin K. Oh (SBN 328481)
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14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF ALAMEDA**

16 ESTHER CORONA, on behalf of herself, the
17 State of California, and Aggrieved Employees.

18 Plaintiffs,

19 vs.

20 JUJUBE HOLDINGS LLC, dba SUNNYVALE
21 POST-ACUTE CENTER; PLUM HEALTHCARE
22 GROUP LLC,

23 Defendant.

Case No. _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) AND
(f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

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28 **COMPLAINT**

Corona v. Jujube Holdings LLC dba Sunnyvale Post-Acute Center, et al., Case No.:

1 Plaintiff Esther Corona (“Plaintiff”), on behalf of herself, the State of California, and
2 Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”) enforcement
5 action behalf of the State of California to collect statutory penalties as a result of Defendant JUJUBE
6 HOLDINGS LLC dba SUNNYVALE POST-ACUTE CENTER’s (“Jujube”) and PLUM
7 HEALTHCARE GROUP LLC’s (“Plum”) (collectively, “Defendants”) systematic violations of
8 California labor law with respect to Defendants’ current and former non-exempt hourly workers in
9 the State of California (“Aggrieved Employees”). Defendants maintain a longstanding policy and
10 practice of failing to pay for all hours worked; failing to provide or make available meal periods,
11 failing to authorize or permit rest breaks; failing to properly compensate non-exempt hourly
12 employees for missed rest periods and non-compliant meal breaks; failing to properly reimburse
13 employees for business expenses; failing to provide timely and itemized wage statements; and failing
14 to pay all wages owed upon separation. These policies deny Plaintiff and Aggrieved Employees
15 proper compensation that complies with California law.

16 2. This PAGA action against Defendants challenges their policies and practices of (1)
17 failing to provide or make available to Plaintiff and Aggrieved Employees the compliant meal breaks
18 which they are entitled by law; (2) failing to authorize and permit Plaintiff and Aggrieved Employees
19 to take rest breaks which they are entitled by law, (3) failing to reimburse Plaintiff and Aggrieved
20 Employees for business expenses expended on behalf of Defendants’ benefit; (4) failing to provide
21 Plaintiff and Aggrieved Employees timely, accurate, and itemized wage statements, and (5) and
22 failing to timely pay Plaintiff and Aggrieved Employees full wages upon termination or resignation.

23 3. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
24 employees who have worked for Defendants in California. Upon information and belief, Defendant
25 Plum is part of the nursing homes and long-term care facilities industry. Plum provides coordinated
26 continuum of care and pre-eminent clinical care for post-acute patients. Plum operates nursing
27

1 facilities and home health and hospice agencies across United States with extensive operations in
2 California, including through Jujube.

3 4. Upon information and belief, Defendant Jujube provides continuing care & assisted
4 living at Sunnyvale Post-Acute Center.

5 5. Plaintiff worked for Defendants as a Certified Nurse's Assistant from January 2020 to
6 August 2020. Her duties included, but were not limited to, checking vital signs, turning or moving
7 patients, feeding patients, washing patients, documenting patient information, and assisting with
8 medical procedures. Excluding time worked off the clock, including during breaks, Ms. Corona
9 typically worked eight hours per shift and five shifts per week, earning \$21.50 per hour. Like Ms.
10 Corona, the alleged aggrieved employees are current and former non-exempt employees of
11 Defendants in California. As a result of such uncompensated time worked off the clock, Plaintiff and
12 Aggrieved Employees worked over eight hours in a day and/or over 40 hours in a week without
13 receiving pay at the appropriate overtime rate for such work.

14 6. Plaintiff files this action to recover all penalties, and other damages on behalf of herself
15 and Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices of Defendants that have
16 deprived Plaintiff and Aggrieved Employees of their lawfully earned wages and breaks.

17 **PARTIES**

18 7. Plaintiff Esther Corona is an individual over the age of eighteen, and at all times
19 mentioned in this Complaint was a resident of the State of California. Plaintiff was employed by
20 Defendants from approximately January 2020 until August 2020. Plaintiff worked for Defendants as
21 a Certified Nurse's Assistant for Jujube at Sunnyvale Health Center.

22 8. Defendant Jujube dba Sunnyvale Post-Acute Center is a short-term rehabilitation and
23 skilled nursing home located in Sunnyvale, California. Defendant Plum owns and operates over 25
24 skilled nursing and rehabilitation centers across the United States, including in California.

25 9. Plaintiff is informed, believes, and thereon alleges that Defendant Plum employs non-
26 exempt workers as Nurses, Nurse's Assistants, Dietary Aides, and other non-managerial positions
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1 throughout California including Alameda County. Defendants employ Plaintiff and the Aggrieved
2 Employees.

3 10. Plaintiff is informed, believes, and thereon alleges that Defendant Plum directly controls
4 the operations of their agents, managers, and employees throughout all their facilities in California.

5 11. At all relevant times, Defendants have done business under the laws of California, and
6 have employed Aggrieved Employees in this judicial district. Defendants are each a “person” as
7 defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also
8 respectively an “employer” as that term is used in the Labor Code, and IWC Wage Orders.

9 **JURISDICTION AND VENUE**

10 12. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). Defendant
11 Plum conducts business, has jobsites, and employs Aggrieved Employees in this County, and as a
12 result, the causes of action asserted arose in whole or in part in this County. Defendants employ
13 Plaintiff and Aggrieved Employees.

14 13. This Court has jurisdictions over Plaintiff’s claims for penalties pursuant to the PAGA.
15 The Court also has jurisdiction over Defendants because they are both limited liability companies
16 authorized to do business in the State of California, and because Defendants, in fact, do business and
17 employ workers in the State of California.

18 **FACTUAL ALLEGATIONS**

19 14. Defendant Plum operates skilled nursing facilities throughout the United States and
20 California, including Alameda County California. Specifically, Defendant Plum owns and operates
21 over 25 skilled nursing and rehabilitation center across the United States, including in California.
22 Plum provides coordinated continuum of care and clinical care for post-acute patients, and Plum
23 operates nursing facilities and home health and hospice agencies across United States with extensive
24 operations in California, including through Defendant Jujube.

25 15. Plaintiff worked for Defendants as a Certified Nurse’s Assistant from January 2020 to
26 August 2020. Her duties included, but were not limited to, checking vital signs, turning or moving
27

1 patients, feeding patients, washing patients, documenting patient information, and assisting with
2 medical procedures. Excluding time worked off the clock, Ms. Corona typically worked eight hours
3 per shift and five shifts per week, earning \$21.50 per hour. Like Ms. Corona, the alleged aggrieved
4 employees are current and former non-exempt employees of Defendants in California. As a result of
5 such uncompensated time worked off the clock, Plaintiff and Aggrieved Employees worked over eight
6 hours in a day and/or over 40 hours in a week without receiving pay at the appropriate overtime rate
7 for such work.

8 16. Defendants employ non-managerial employees in the State of California and uniformly
9 classify them as hourly, non-exempt employees under California law.

10 17. Non-exempt, hourly workers employed by Defendants have a variety of responsibilities.
11 Some employees clean patient rooms, communicate with doctors, administer medicine, record
12 medical history and symptoms, and perform diagnostic tests. Others interact directly with the patients
13 in checking vital signs, feeding and washing them, documenting information, and assisting with
14 medical procedures, among other tasks.

15 18. Plaintiff and Aggrieved Employees are routinely denied rest breaks because Defendants
16 do not authorize permit, and/or make available timely rest breaks periods. Specifically, pursuant to
17 uniform, companywide policies and practices, Defendants require Plaintiff and Aggrieved Employees
18 to remain on duty throughout their scheduled shifts, including during rest break periods. Additionally,
19 Plaintiff and Aggrieved Employees are either too busy with work during the day to have time to take
20 bona fide rest breaks or get called back to work mid-break to assist with a patient. Plaintiff Corona,
21 for example, was unable to take a compliant rest break an average of four times per week.

22 19. Despite these recurring violations, Defendants do not provide Plaintiff and Aggrieved
23 Employees premium pay for missed rest periods.

24 20. Plaintiff is informed, believes, and thereon alleges that the same rest break policies are
25 used across all Defendants' facilities throughout California.

21. Defendants also do not permit Plaintiff and Aggrieved Employees to take compliant meal break periods. Specifically, Plaintiff and Aggrieved Employees are routinely denied timely meal breaks because Defendants do not make available timely meal break periods. Plaintiff and Aggrieved Employees are too busy with work during the day to have time to take bona fide meal breaks before the fifth hour of work. Plaintiff Corona, for example, was unable to take a compliant meal break an average of two to four times per week, and was often called back to work during her meal break to assist with a patient.

22. As well, despite working an excess of 10 hours twice per month and not waiving her rights to a second meal period, Plaintiff and Aggrieved Employees were not provided a second meal break in violation of California law.

23. Despite these recurring violations, Defendants do not provide Plaintiff and Aggrieved Employees with premium pay for missed or untimely meal breaks.

24. Plaintiff is informed, believes, and thereon alleges that the same meal break policies are used across all Defendants' facilities.

25. Defendants also deny Plaintiff and Aggrieved Employees proper reimbursement for business expenditures. Plaintiff and Aggrieved Employees are required to provide their own equipment and uniforms such as thermometers and scrubs, provide their own personal protective equipment such as face masks and hand sanitizer, and use their personal cell phones in the performance of their work duties. Specifically, Defendants contact Plaintiff and aggrieved employees on their personal cell phones to discuss scheduling changes. However, Defendants do not reimburse Plaintiff and Aggrieved Employees for such expenses, even though it should be fully reimbursed under California law. Defendants' failure to properly reimburse Plaintiff and Aggrieved Employees' necessarily incurred business expenses gives rise to violations of Labor Code § 2802.

26. Upon information and belief, Defendants institute the same or substantially similar policy throughout their locations in California that result in hundreds of Aggrieved Employees not being reimbursed for business expenditures incurred for the benefit of Defendants.

1 27. Defendants' failure to compensate employees for missed rest and meal breaks also
2 results in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage
3 statements. The wage statements are inaccurate because they do not include premium pay for missed
4 or untimely meal breaks.

5 28. Further, Defendants do not provide Aggrieved Employees, including Plaintiff, whose
6 employment has ended, with full payment of all wages owed at the end of their employment. As these
7 workers are owed premium pay and reimbursements for all business expenses when their employment
8 ends, and these amounts remain unpaid under Defendants' policies and practices, Defendants fail to
9 pay all wages due upon termination. As a consequence, Defendants are subject to waiting time
10 penalties.

11 29. Defendants have employed several hundreds of employees during the year and 65-day
12 period prior to the filing of this Complaint.

13 30. As employers in California who obligated to know and follow the California Labor Code
14 and state employment laws, Defendants' methods of paying Plaintiff and Aggrieved Employees were
15 willful and were not based on a good faith and reasonable belief that their conduct complied with
16 California law.

17 31. Defendants' conduct was willful, carried out in bad faith, as shown by the repeated
18 knowing violations of California law, and caused significant damages to non-exempt hourly
19 employees in an amount to be determined at trial.

20 **FIRST CAUSE OF ACTION**
21 **Penalties Pursuant to Labor Code § 2699(a)**

22 32. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
23 herein.

24 33. Labor Code § 2699(a) provides:

25 Notwithstanding any other provision of law, any provision of this code that
26 provides for a civil penalty to be assessed and collected by the Labor and
27 Workforce Development Agency or any of its departments, divisions
 commissions, boards, agencies or employees, for a violation of this code,
 may, as an alternative, be recovered through a civil action brought by an

aggrieved employee on behalf of himself or herself and other current or former employees.

34. Labor 226.7 Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he or she quits, at the latest.

35. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

36. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

37. Labor Code § 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

38. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at

each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

39. Defendant Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

40. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of employment to Plaintiff and Aggrieved Employees in compliance with Labor Code § 203.

41. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a).

42. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days of work in any order of the IWC.

43. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. More than sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

44. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and herself as set forth in Labor Code § 2699(g)(i).

45. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for

1 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
2 and costs as set forth below.

3 46. Wherefore, Plaintiff requests relief as hereinafter provided.

4 **SECOND CAUSE OF ACTION**
5 **Penalties Pursuant to Labor Code § 2699(f)**

6 47. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
7 herein.

8 48. Labor Code § 2699(f) provides:

9 For all provisions of this code except those for which a civil penalty is
10 specifically provided, there is established a civil penalty for a violation of
11 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
12 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

13 49. Labor Code § 200 defines wages as "all amounts for labor performed by employees
14 of every description, whether the amount is fixed or ascertained by the standard of time, task,
15 piece, commission basis or method of calculation."

16 50. Labor Code § 204(a) provides that "[a]ll wages ... earned by any person in any
17 employment are due and payable twice during each calendar month...."

18 51. IWC Wage Order 5-2001 defines hours worked as "the time during which an employee
19 is subject to the control of an employer, and includes all the time the employee is suffered or
20 permitted to work, whether or not required to do so."

21 52. Labor Code § 1198 makes it unlawful for employers to employ employees under
22 conditions that violate the Wage Order.

23 53. Labor Code § 510 provides, in relevant part:

24 Eight hours of labor constitutes a day's work. Any work in excess of eight
25 hours in one workday and any work in excess of 40 hours in any one
26 workweek and the first eight hours worked on the seventh day of work in
27 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

1 the regular rate of pay for an employee. In addition, any work in excess of
2 eight hours on any seventh day of a workweek shall be compensated at the
3 rate of no less than twice the regular rate of pay of an employee. Nothing in
4 this section requires an employer to combine more than one rate of overtime
compensation in order to calculate the amount to be paid to an employee for
any hour of overtime work.

5 54. Labor Code § 1197 provides:

6 The minimum wage for employees fixed by the commission or by any
7 applicable state or local law, is the minimum wage to be paid to employees,
8 and the payment of a lower wage than the minimum so fixed is unlawful.
This section does not change the applicability of local minimum wage laws
to any entity.

9 55. Labor Code § 1194 provides, in relevant part:

10 Notwithstanding any agreement to work for a lesser wage, any employee
11 receiving less than the legal minimum wage or the legal overtime
12 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.

13 56. Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 requires Defendants to
14 authorize, permit, and/or make available timely and compliant meal and rest periods to its employees.
15 Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 prohibits employers from employing an
16 employee for more than five hours without a meal period of not less than thirty minutes, and from
17 employing an employee more than ten hours per day without providing the employee with a second
18 meal period of not less than thirty minutes. Section 226.7 and IWC Wage Orders 5-2001 also requires
19 employers to authorize and permit employees to take ten minutes of net rest time per four hours, or
20 major fraction thereof of work, and to pay employees their full wages during those rest periods.
21 Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest
22 period, the employee is considered "on duty" and the meal or rest period is counted as time worked
23 under the applicable wage orders.

24 57. Labor Code § 558 provides in relevant part as follows:

25 Any employer or other person acting on behalf of an employer who violates, or causes to be
26 violated, a section of this chapter or any provision regulating hours and days of work in any
27 order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

1 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
2 period for which the employee was underpaid in addition to an amount sufficient to recover
underpaid wages.

3 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
4 for each pay period for which the employee was underpaid in addition to an amount
sufficient to recover underpaid wages.

5
6 Plaintiff seeks those penalties under Labor Code § 558 to the extent permitted under the
7 PAGA and California law.

8 58. Labor Code § 2802 requires employers to indemnify employees for all necessary
9 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
10 duties.

11 59. To the extent than any violation alleged herein does not carry penalties under Labor
12 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
13 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
14 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's
15 violations of Labor Code §§ 1182.12, 1194, 1197, 204, and 2802.

16 60. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
17 notice of her intention to file this claim. More than sixty-five calendar days have passed without
18 notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil
19 action in compliance with § 2699.3(a).

20 61. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
21 Employees, and himself as set forth in Labor Code § 2699(g)(i).

22 62. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for
23 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
24 award of attorneys' fees and costs as set forth below.

25 63. Wherefore, Plaintiff requests relief as hereinafter provided.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant has violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For an award of reasonable attorneys' fees as provided by the California Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
4. For interest on penalties awarded as provided by applicable law;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: August 31, 2021



Carolyn H. Cottrell
Caroline N. Cohen
Jin K. Oh
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully submitted,

Date: August 31, 2021



Carolyn H. Cottrell
Caroline N. Cohen
Jin K. Oh
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*