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SUPERIOR COURT - STOCKTON

2021 AUG -9 AM 11:23

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6 Behalf of all others similarly situated

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

10 LORENA VIDAL, in her representative
11 capacity on her own behalf and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 vs.

15 THE CALIFORNIA HOME FOR THE
16 AGED, INC., dba California Armenian
17 Home, a California corporation; and DOES
1 through 50, inclusive,

18 Defendants.

Case No. STK-CV-408-2021-7495

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF LABOR CODE §2698 Et
Seq. (Private Attorneys General Act of 2004)**

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21
22 Lorena Vidal, in her capacity as representative plaintiff ("Plaintiff") on her own behalf and on
23 behalf of all others similarly situated (the "Aggrieved Employees") hereby files this
24 Representative Action against THE CALIFORNIA HOME FOR THE AGED, INC., dba
25 California Armenian Home, a California corporation ("Defendant"); and DOES 1 through 50,
26 inclusive.

27 Ms. Vidal is informed and believes, and on the basis of that information and belief, alleges
28 as follows:

INTRODUCTION

1
2 1. This action is brought pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General
3 Act of 2004) (the “PAGA”) for Defendant’s violations of *California Labor Code* §§ 201-204;
4 226(a), 226.7, 512, 1174(d), 1194, 2802, 432.5 and provisions of the Industrial Wage
5 Commission (“IWC”) Wage Order No. 5-2001, for failure to pay Plaintiff and Aggrieved
6 Employees for all wages earned; for failure to provide accurate, itemized wage statements; for
7 failure to provide ten-minute rest breaks for every four hours worked or a major fraction thereof;
8 for failure to provide duty-free meal breaks for every shift worked that is five hours or longer; for
9 failure to pay premiums equal to one hour of pay at the regular hourly rate of pay for each rest
10 break and each meal break violation; failure to record all hours worked and wages earned; failure
11 to timely pay all wages due at the time of separation or termination of employment; and failure to
12 reimburse work related expenses for personal cell phone use and internet service charges related
13 and necessary in the discharge of work-related duties.

14 2. This complaint challenges Defendant’s systemic illegal employment practices set forth in
15 paragraph 1 (*supra*) resulting in violations of the state provisions of the Labor Code and the IWC
16 against Plaintiff and similarly-situated Aggrieved Employees.

17 3. Plaintiff is informed and believes and thereon alleges Defendant acted intentionally and
18 with deliberate indifference and conscious disregard to Plaintiff’s and the Aggrieved Employees’
19 rights when they failed to pay Plaintiff and Aggrieved Employees for all wages earned; failed to
20 provide accurate, itemized wage statements; failed to provide ten-minute rest breaks for every
21 four hours worked or a major fraction thereof; failed to provide duty-free meal breaks for every
22 shift worked that is or was five hours or longer; failed to pay premiums equal to one hour of pay
23 at the regular hourly rate of pay for missed rest break and missed meal breaks; when they
24 intentionally failed to record all time, all hours worked and wages earned, (including time such
25 employees worked while off the clock during rest and meal break periods); when they failed to
26 timely pay all wages due at the time of separation or termination of employment; and when they
27 failed to pay reimbursement for expenses the Plaintiff and Aggrieved Employees incurred in the
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1 discharge of their duties, to which they are/were lawfully entitled.

2 **GENERAL ALLEGATIONS**

3 4. Defendant, is a California corporation, with its principal place of business located at 6694
4 E. Kings Canyon Road, Fresno, California 93727.

5 5. Upon information and belief and thereupon Plaintiff alleges that at all times relevant, The
6 California Home for the Aged, Inc. dba California Armenian Home has operated a skilled nursing
7 facility that provides individualized care and healthy living activities for the elderly.

8 6. Plaintiff is informed and believes and thereupon alleges that Defendant is in some
9 manner responsible for the acts and damages complained of and that each of alleged acts and
10 harms described herein were done in the capacity as managing agents, employees, and/or
11 representatives of Defendant, and that each was acting within the scope of such agency,
12 employment and/or representation in doing the wrongful acts alleged herein (below).

13 7. Plaintiff is unaware of the true names and capacities of Defendants sued as DOES 1
14 through 50, inclusive, and therefore Plaintiff sues these Defendants by fictitious names. Plaintiff
15 is informed and believes and thereupon alleges that each of the fictitiously named Defendants is
16 in some manner responsible for the wrongful acts and resulting damages to Plaintiff as alleged in
17 this Complaint. Plaintiff will amend this Complaint to show the true names and capacities of
18 these fictitiously named Defendants after their true names and capacities have been ascertained.

19 8. Plaintiff is further informed and believes and thereon alleges that all of the acts and
20 conduct described herein below of DOES 1 through 50, inclusive, were done in the capacity as
21 managing agents, employees, and/or representatives of Defendant, and each such Defendant was
22 acting within the scope of such agency, employment and/or representation in doing the wrongful
23 acts alleged herein below and with permission and consent.

24 **The Plaintiff**

25 9. Plaintiff, Lorena Vidal was at all relevant times herein a resident of Fresno, California, in
26 the County of San Joaquin. During the relevant statutory period, she was employed by Defendant
27 as a non-exempt medical technician from on or about May 22, 2019, to on or about April 23,
28

2021.

JURISDICTION AND VENUE

10. This action is brought pursuant to the PAGA. The civil penalties sought by Plaintiff on behalf of herself and on behalf of similarly-situated, aggrieved employees during the statutory period exceeds the minimum jurisdiction limits of the Superior Court and will be established according to proof at trial.

11. This Court has jurisdiction of this action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action of brought do not specify any other basis for jurisdiction.

12. This Court has jurisdiction over the violations of the PAGA and Labor Code §§ 201, 203, 204, 226 (a), 226.7, 510, 512, 1174 (d), 1194, 2802, 432.5 and IWC Order No. 5, for unpaid wages, unpaid overtime, for rest and meal break violations and for unpaid premiums for missed or non-compliant meal and rest breaks, for failure to maintain accurate records of all actual hours worked and wages earned, for failure to properly compensate overtime wages, for furnishing inaccurate wage statements, for unreimbursed work-related expenses and for failure to pay all wages due upon termination of employment.

13. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have office in this county and the acts and omissions alleged herein took place in this county.

SUMMARY OF CLAIMS

19. At all relevant times herein, Plaintiff was employed as a full time, non-exempt employee working as a medical technician at The California Home for the Aged, Inc., dba California Armenian Home in Fresno, California.

20. Ms. Vidal's work schedule varied, but she typically worked either from 6:00 a.m. until 2:30 p.m. or alternatively from 2:00 p.m. until 10:30 p.m. approximately six days per week.

1 21. At all relevant times herein, Plaintiff and the Aggrieved Employees were and are
2 currently denied the ability to take timely, duty free rest breaks nor, timely, duty free meal
3 breaks, if they are/were even able or permitted to take them at all.

4 22. When Plaintiff arrived for her shifts, her on-duty supervisor would assign her and an
5 additional medical technician to one of two sections of their floor, and for which patients in
6 those assigned section, they were responsible for administering medications. Per each
7 section, there were at least three additional assigned caregivers on duty who were also
8 responsible for the care and safety of the residents in their assigned section.

9 23. Plaintiff was not the sole caregiver of her assigned residents. In fact, Defendant
10 instructed Plaintiff and the Aggrieved Employees to alert the other on-duty caregivers in
11 their section whenever they were clocking out for their meal periods to ensure that there
12 would always be a caregiver present to respond to call lights and emergencies.

13 24. Despite this articulated policy, it was nevertheless routinely violated by supervisors
14 and caregivers who contacted Plaintiff and the Aggrieved Employees despite being aware
15 that they were clocked out for their meal break periods.

16 25. Plaintiff and the Aggrieved Employees were actively impeded and prohibited by
17 Defendant from taking their proper meal break periods due to Defendant's chronic failure
18 to enforce its articulated policy and relinquish control to allow Plaintiff and the Aggrieved
19 Employees to receive uninterrupted meal break periods. Supervisors would routinely
20 bombard Plaintiff and the Aggrieved Employees with questions regarding medications and
21 residents while on their meal periods. Thus, meal periods were often cut short and were
22 rarely duty free and uninterrupted. Each such interrupted, non-duty free meal period,
23 where Defendant required Plaintiff and the Aggrieved Employees to work or respond to
24 work-related communications or inquiries, constituted a rest or meal break violation under
25 California law and the applicable IWC Wage Order.

26 26. Defendant's time keeping system which Plaintiff and the Aggrieved Employees
27 used to clock in/out for meal periods was set up to automatically record meal premiums
28 when the Aggrieved Employees clocked out late or completely missed their meal periods.

1 27. However, when Plaintiff and the Aggrieved Employees clocked out late for their
2 meal periods – due to the chronic understaffing and occasional emergencies pertaining to
3 residents – Defendant’s Assistant Living Director, Bianca Resendez, sent her assistant
4 Garciela Herrera to walk around with a clipboard with meal premium waiver forms
5 attached, requiring Plaintiff and the Aggrieved Employees to sign away their right to their
6 entitlement to be paid premium pay equal to one hour’s wage at their regular hourly rate of
7 pay, for the meal break violations that the system had recorded. On multiple occasions,
8 Defendant threatened Plaintiff with disciplinary action if she did not sign the premium
9 waiver, despite not being able to receive a timely and duty-free meal period that shift.

10 28. Once Plaintiff and the Aggrieved Employees would sign the premium pay waiver,
11 Ms. Herrera would log into the system and altered the time punches in the system to make
12 it appear that Plaintiff and the Aggrieved Employees had timely taken or received full meal
13 break periods, when in fact they had not.

14 29. Defendant requiring Plaintiff and the Aggrieved Employees to sign a written
15 statement waiving their right to their entitled meal premiums and threatening disciplinary
16 action when Plaintiff refused to sign such waiver is in violation of Labor Code § 432.5.

17 30. Accordingly, during the relevant statutory period, the Plaintiff and Aggrieved
18 Employees were not provided with one hour’s wages in lieu of missed or non-compliant meal
19 breaks in one or more of the following manners:

20 a) They were not provided timely, uninterrupted, full thirty-minute meal
21 periods after every five hours of labor performed and were not compensated one hour’s wages in
22 lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and applicable IWC
23 Wage Order No. 5-2001; and/or

24 b) They were required to perform work, such as answering questions
25 regarding residents, during their daily meal period(s); and/or

26 c) They were impeded in their ability to take a meal period; and/or

27 d) They were required by Defendant to sign a statement waiving the
28 right to their entitled meal premiums for missed and non-compliant meal periods.

1 31. In addition, during the relevant statutory period, Plaintiff and the Aggrieved Employees
2 were not provided lawful rest periods, and were not provided with one hour's wages in
3 lieu thereof, in one or more of the following manners:

4 a) They were required to work without being provided a minimum ten-
5 minute, uninterrupted, duty free rest period for every four hours or major fraction thereof
6 worked and were not being compensated one hour of pay at their regular rate of compensation
7 for each workday that a rest period was not provided; and/or

8 b) They were either impeded or prevented from taking or unable to take
9 lawful rest break periods.

10 32. Plaintiff was never informed by her supervisors or managers, during training or at
11 any other time during her employment that she was entitled to take rest breaks after every
12 fourth hour of labor worked or major fraction thereof.

13 33. Defendant was fully aware that Plaintiff and the Aggrieved Employees were entitled
14 to take rest and meal break periods, yet willfully and knowingly impeded and deprived
15 them of their ability to take their rest break and meal breaks. Instead, Defendant fostered
16 and perpetuated a working environment in which Plaintiff and the Aggrieved Employees
17 were suffered to work without regard to the laws entitling such workers to labor code
18 complaint rest and meal break periods.

19 34. Due to the foregoing violations, Ms. Vidal and the Aggrieved Employees are/were
20 entitled to premium pay penalties for every missed, and/or non-compliant rest and meal
21 periods, during each pay period throughout the applicable statutory period when such
22 violations occurred.

23 35. Further, the time during these unlawfully abbreviated and/or non-duty free rest and
24 meal periods when Plaintiff and the Aggrieved Employees were working while "off the
25 clock" was never recorded nor compensated by Defendant as actual hours worked by
26 Plaintiff and the Aggrieved Employees. Thus, Defendant has failed to maintain accurate
27 records of hours worked and wages earned in violation of California Labor Code Section
28 1174(d).

1 36. Due to Defendant's routine interruptions of the Plaintiff and Aggrieved Employees'
2 rest and meal periods, Defendant caused such individuals to work while off the clock and
3 consequently caused their hours worked to exceed more than eight hours in a single day
4 and more than forty hours in a workweek. Those additional off the clock hours worked
5 constituted overtime hours which was also never recorded nor compensated in violation of
6 California Labor Code Section 510.

7 37. Because of the foregoing alleged practices, the Plaintiff and Aggrieved Employees
8 did not receive accurately itemized wage statements during the relevant statutory period
9 that accurately reflected all hours worked nor accurately reflecting the corresponding
10 proper rates of pay.

11 38. During the relevant statutory period, the non-exempt Plaintiff and Aggrieved
12 Employees were not paid wages for all hours worked, whether regular time or overtime,
13 and/or were required to work without compensation during the workday and workweek
14 while performing compensable tasks and duties while off the clock.

15 39. Further on information and belief, in addition to Defendant's willful failure to pay
16 overtime and failure to pay all wages for every hour of labor worked, and failure to pay
17 premium penalties for missed and non-compliant rest breaks and meal breaks, Defendant
18 also willfully failed to pay all such legally due wages when Plaintiff and formerly
19 employed Aggrieved Employees ceased their employment with Defendant in violation of
20 California Labor Code §§ 201-202.

21 40. Moreover, during the relevant statutory period, Plaintiff and the Aggrieved
22 Employees are/were required to utilize their personal cell phones for work, as they were
23 contacted on their personal cell phones regarding resident care and scheduling. Utilization
24 of their personal cell phones was an essential and daily part of the job. Plaintiff Vidal
25 frequently received text messages from supervisors, both during and after her scheduled
26 shifts, regarding sensitive resident information and medications, and was expected to
27 respond. Defendant also called and sent text messages to Plaintiff and the Aggrieved
28

1 Employees while they were off the clock, regarding scheduling changes and shift coverage
2 requests.

3 41. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved Employees for
4 the expenses they incurred when using their personal cell phones for these daily work-
5 related communications in violation of California Labor Code Section 2802.

6 42. Defendant engaged in, ratified and enforced the following unlawful practices and
7 policies against Plaintiff and the Aggrieved Employees she seeks to represent:

- 8 a.) Failing to pay former employee Aggrieved Employees who were discharged,
9 laid off, or resigned in accordance with the requirements of Labor Code §§
10 201, 202, and 203.
 - 11 b.) Failing to pay non-exempt employees overtime for all hours worked in
12 excess of an eight-hour day or in excess of a forty-hour workweek in
13 violation of Labor Code Sections 510, 1194 and IWC Wage Order No. 5-
14 2001.
 - 15 c.) Failing to maintain accurate records of all hours worked and earned wages in
16 violation of Labor Code §§ 226 and 1174(d) and IWC Wage Order No. 5-
17 2001.
 - 18 d.) Failing to provide non-exempt employees, timely, duty free, uninterrupted
19 full 30-minute meal periods under Labor Code Section 226.7 and IWC Wage
20 Order No. 5-2001 after every five hours of labor performed.
 - 21 e.) Failing to provide timely, duty free, uninterrupted full ten-minutes rest
22 periods after every fourth hour of labor performed or major fraction thereof,
23 in violation of Labor Code Section 226.7 and IWC Wage Order No. 5-2001,
24 Section 12 (A&B).
 - 25 f.) Failing to pay premium pay penalties for each missed rest and meal break
26 violation in violation of Labor Code § 226.7 (b) and IWC Wage Order No. 5-
27 2001.
- 28

1 g.) Failing to furnish accurately itemized wage statements in violation of Labor
2 Code Section 226(a).

3 h.) Failing to pay employees all wages due, each and every pay period under
4 Labor Code Section 204.

5 i.) Failing to reimburse employees for personal cell phone expenses necessarily
6 incurred in the discharge of their duties in violation of Labor Code Section
7 2802.

8 j.) Requiring employees to agree in writing to illegal terms in violation of Labor
9 Code Section 432.5.

10 36. On information and belief, Plaintiff alleges that Defendant's actions as described
11 throughout this Complaint were willful and occurred during the PAGA period. To the
12 extent equitable tolling operate to toll claims by Aggrieved Employees against Defendant,
13 the PAGA Period should be adjusted accordingly. To the extent that any of the alleged
14 conduct and violations did not affect Plaintiff during the PAGA period, Plaintiff seeks
15 penalties for those violations that affected other Aggrieved Employees pursuant to
16 *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for publication 12/19/18)

17 37. Plaintiff brings this case as a representative action seeking penalties for the State of
18 California in a representative capacity, as provided by the Private Attorneys General Act
19 ("PAGA") to the extent permitted by law, and as aggrieved employee who held the position
20 identified herein and who was subject to Defendant's violations of the Labor Code as
21 alleged herein. A true and correct copy of the May 28, 2021, written notice showing
22 Plaintiff's compliance with Labor Code § 2699.3 is attached hereto as **Exhibit A** and
23 demonstrates that the Plaintiff is an aggrieved employee who has standing to bring a
24 representative action on behalf of the State of California and Labor and Workforce
25 Development Agency (the "LWDA") as a private attorney general. On August 6, 2021,
26 Plaintiff filed her First Amended PAGA notice with the LWDA via online filing and
27 provided copies to Defendant via certified mail. A true and correct copy of the August 6,
28 2021, First Amended PAGA notice is attached hereto as **Exhibit B**.

1 38. No notice of cure by Defendant was provided and no notice of investigation was
2 received from the LWDA in the statutorily proscribed 65-day period since the May 28,
3 2021, written notice. Accordingly, Plaintiff files this as a representative action as
4 specifically permitted and authorized by Labor Code § 2699.3(a)(2)(A).

5
6 **CAUSE OF ACTION**
7 **VIOLATION OF THE PAGA**
8 **(As to Defendants and Does 1 – 50, inclusive)**

9 39. Plaintiff realleges and incorporates each and every allegation contained in this
10 Complaint and incorporates the same as though set forth in full herein.

11 40. The PAGA expressly establishes that any provision of the California Labor Code which
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce
13 Development Agency (the “LWDA”), or any of its departments, divisions, commissions, boards,
14 agencies or employees for a violation of the California Labor Code, may be recovered through a
15 civil action brought by an aggrieved employee on behalf of himself or herself, and other current
16 or former employees.

17 41. Plaintiff, by her employment with Defendant and Defendant’s violations of the Labor
18 Code as alleged herein, is an aggrieved employee with standing to bring an action under the
19 PAGA.

20 42. Plaintiff, by virtue of **Exhibit A** has satisfied all prerequisites to serve as a representative
21 of the general public to enforce California’s labor laws including, without limitation, the penalty
22 provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the time
23 period required to intervene and because Defendant took no corrective action to remedy the
24 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
25 will seek any and all civil penalties otherwise capable of being collected by the Labor
26 Commission and/or the DLSE.

27 43. Plaintiff is informed and believes that Defendant has violated and continues to violate the
28 provisions of the Labor Code and applicable Wage Order No. 5-2001.

44. Pursuant to Labor Code section 2699, any provision of the Labor Code that already

1 provides a civil penalty to be assessed and collected by the Labor and Workforce Development
2 Agency, or any of its departments, divisions, commissions, boards, agencies or employees for
3 violation of the code or does not provide a civil penalty may be recovered through a civil action
4 brought by an aggrieved employee on behalf of himself or herself, and other current or former
5 employees pursuant to the procedures set forth in Labor Code, section 2699.3.

6 45. Plaintiff, on her own behalf, and on behalf of the other similarly situated Aggrieved
7 Employees is an “aggrieved employee” because she was employed by the violators (the named
8 Defendant herein and its related Doe affiliates and subsidiaries), during the one-year statutory
9 time period and during such time period, was subjected to one or more violations, including
10 Labor Code sections 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194(a), 2802. 432.5 and
11 IWC No. 5, and are therefore properly suited to represent the interests of a PAGA person

12 46. Plaintiff is informed and believes and thereon alleges that Defendant has violated and
13 continues to violate provisions of the Labor Code and applicable Wage Order No. 5. Despite the
14 mailing of **Exhibit A** at least 65-days prior to the filing of the filing of this Complaint, the
15 LWDA has not notified Plaintiff that it intends to investigate the alleged Labor Code violations
16 identified in **Exhibit A**, such that, by operation of law Plaintiff is entitled to commence this cause
17 of action as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

18 **Failure to Provide Rest Periods**

19 26. In accordance with the mandates of Labor Code § 226.7, 512 and IWC No. 5 (Section 12
20 (A) and (B), Plaintiff and the Aggrieved Employees are/were entitled to be authorized and
21 permitted paid, duty-free, uninterrupted 10-minute rest periods for every four hours worked (or
22 every major fraction thereof) or be paid for one hour of “premium pay” at the employee’s regular
23 rate of pay for each day that a rest period was not authorized, permitted or otherwise compliant
24 with California law.

25 27. During the PAGA liability period, as a pattern and practice, Defendant failed to provide
26 Plaintiff and the Aggrieved Employees with legally-mandated rest breaks and failed to pay them
27 proper compensation for this failure.

28 28. By their failure to provide a rest period for every four hours or major fraction thereof

1 worked per day and by failing to provide compensation for such unprovided rest periods, as
2 alleged Defendant willfully violated the provisions of Labor Code Section 226.7 and IWC No. 5
3 Section 12 (A) & (B).

4 29. Plaintiff and the Aggrieved Employees did not voluntarily or willfully waive their rest
5 periods.

6 30. Pursuant to Section 12 (B) of IWC No. 5 and Labor Code § 226.7(c) – “[i]f an employer
7 fails to provide an employee a ... rest ... period in accordance with a state law ..., the employer
8 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation
9 for each workday that the ... rest ... period is not provided” – the Plaintiffs and the Aggrieved
10 Employees were entitled to premium pay in an amount equal to one additional hour of pay at
11 each employee’s regular rate of compensation for each work day that a rest period was not
12 provided.

13 **Failure to Provide Meal Breaks**

14 31. Defendant was required to authorize and permit Plaintiff and the Aggrieved Employees
15 who work or worked shifts in excess of five hours a half-hour uninterrupted meal period in which
16 they are relieved of all duty.

17 32. During the relevant statutory period, when Plaintiff and the Aggrieved Employees worked
18 shifts which were in excess of five hours, they were not provided with a compliant half-hour
19 uninterrupted meal period after each five hours of labor worked.

20 33. At no time did Plaintiff and the Aggrieved Employees voluntarily or willfully waive their
21 duty free meal periods.

22 34. As alleged, Defendants consistently failed to provide Plaintiff and the Aggrieved
23 Employees their duty-free half-hour uninterrupted meal periods. Instead, Plaintiff and the
24 Aggrieved Employees were frequently interrupted by supervisors and staff with questions about
25 medications and sensitive information pertaining to residents.

26 35. In addition, Defendant required Plaintiff and the Aggrieved Employees to sign a meal
27 premium waiver, waiving their rights to premium pay to which they were entitled when their
28 time punches showed that they clocked out late (after the fifth hour of labor performed) for meal

breaks or completely skipped or missed their meal periods altogether Defendant threatened Plaintiff with disciplinary action (which she believed and understood to include her termination) on multiple occasions if she refused to sign this false statement that she was voluntarily waiving premium pay to which she was entitled.

36. When Plaintiff and the Aggrieved Employees signed such waivers, Defendant falsified their timekeeping records to make it appear as if they received a timely and duty-free meal break.

37. As a result of Defendant's failure to afford proper, duty free meal periods, Defendant is liable to Plaintiff and the Aggrieved Employees for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to California Labor Code section 226.7 and IWC No. 5 Section 11 (A) and (B).

38. Defendants have not paid such premium to Plaintiff and the Aggrieved Employees.

39. As a result of Defendant's conduct, Plaintiff and the Aggrieved Employees are entitled to PAGA penalties to compensate them for the unpaid premiums with respect to each missed meal break during the relevant statutory period.

Failure to Pay Wages When Due

40. Labor Code § 200 (a) defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation."

41. Plaintiff and the Aggrieved Employees were at all times subject to California's laws and regulations protecting employees' entitlement to be paid and presumption to be paid all wages earned for labor performed, when due within the time specified by law.

42. The California Labor Code Section 204 provides that for employees entitled to pay twice per month, two periods of pay are required. Labor performed between the 1st and 15th of the month must be paid between the 16th and 26th of the same month and labor performed on the 16th and the end of the month must be paid on pay days between the 1st and 10th of the following month.

42. Plaintiff and the Aggrieved Employees were entitled to be paid twice monthly for all labor performed. Although Plaintiff and the Aggrieved Employees are and/or were paid

1 twice monthly, Defendant failed and intentionally refused to pay Plaintiff and the
2 Aggrieved Employees all wages they were due during each pay period during the statutory
3 period, including premium penalties for missed, and/or untimely, duty-free rest periods and
4 meal breaks.

5 43. Through their unlawful and illegal policies and practices, Defendant has failed to pay
6 Plaintiff and the Aggrieved Employees all wages owed to them when due in violation of Labor
7 Code Section 204.

8 **Failure to Provide Complete and Accurate Wage Statements**

9 44. At all times relevant herein, Defendant was required to keep *accurate* records regarding
10 their California employees pursuant to the mandates of Labor Code §§ 226 and 1174(d).

11 45. As a result of Defendant's various Labor Code violations, Defendant failed to keep accurate
12 records regarding Plaintiff and the Aggrieved Employees. Defendant virtually failed to record or
13 track time worked while off the clock, responding to texts from facility staff and supervisors
14 regarding work-related matters while on meal periods and after work hours. Thus, Defendant failed
15 in their affirmative obligation to keep accurate records regarding Plaintiff and the Aggrieved
16 Employees' gross wages earned, the total hours each of them worked, all deductions, net wages
17 earned, and all applicable hourly rates and the number of hours worked at each respective hourly
18 rate, and completely omitted from paystubs, premiums to which they were entitled for missed and
19 non-compliant rest and meal break periods.

20 **Failure to Reimburse Expenses**

21 46. At all times relevant herein, Plaintiff and the Aggrieved Employees were entitled to be
22 reimbursed for expenses incurred in the discharge of their work-related duties.

23 47. During the relevant statutory period, Plaintiff and the Aggrieved Employees were required
24 to utilize their personal cell phones for work-related communications between facility staff and
25 supervisors. Plaintiff and the Aggrieved Employees receive text messages while on-duty to
26 inform their supervisors of the status of their residents and to receive work-related instructions.
27 Further, Plaintiff and the Aggrieved Employees receive text messages on their personal cell
28 phones when they are/were off the clock while on their own personal time, concerning scheduling

1 and other work related issues.

2 49. Defendant has not paid Plaintiff nor the Aggrieved Employees for their daily imposition
3 and use of their personal cell phones and service expenses they incur in using their personal
4 devices and services in the discharge of their work-related duties.

5 50. California Labor Code Section 2802 provides “An employer shall indemnify his or her
6 employee for all necessary expenditures or losses incurred by the employee in direct consequence
7 of the discharge of his or her duties... or in obedience to the directions of his/her employer...”

8 51. As a result of Defendant’s failure to reimburse Plaintiff and the Aggrieved Employees for
9 requiring them to utilize their personal cell phones in the discharge of their duties, they have
10 violated Labor Code Section 2802.

11 **Failure to Pay Wages Due Upon Termination or Separation**

12 52. Labor Code §§ 201 and 202 require employers such as Defendant to pay their employees
13 all wages due within the time specified by law. California Labor Code § 203 provides that if an
14 employer willfully fails to timely pay such wages, the employer must continue to pay the
15 employee’s subject wages until the back wages are paid in full or an action is commenced, up to
16 a maximum of 30 calendar days of wages.

17 53. As alleged supra, many former employees who worked for Defendant have ceased
18 employment with Defendant. At the time of separation such former employees were entitled to
19 be paid all wages each was due for all the hours he or she worked. Defendant violated Section
20 203 by failing to provide Plaintiff and the Aggrieved Employees with all owed compensation at
21 the time of termination or separation.

22 **Requiring Employees to Agree in Writing to Illegal Terms**

23 54. During the relevant statutory period, Plaintiff and the Aggrieved Employees were
24 required to agree in writing to a meal premium waiver when their entitled meal periods were
25 either untimely or completely missed. In order to avoid disciplinary action, Plaintiff and the
26 Aggrieved Employees signed the waivers which were in fact non-voluntary. Forcing Plaintiff
27 and the Aggrieved Employees to involuntarily sign the waivers was an unlawful restraint of
28 their ability to receive their lawfully entitled meal premiums. Accordingly, Defendant imposed

1 a term and condition of employment on its employees that it knew/knows is/was prohibited by
2 law in violation of Labor Code Section 432.5.

3 **Damages**

4 55. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by the
5 California Labor Code as alleged, and therefore these acts constitute violations of the PAGA.

6 56. Pursuant to California Labor Code § 2699, Plaintiff on her own behalf and on behalf of
7 the Aggrieved Employees, requests and is entitled to recover from Defendant, civil penalties, and
8 attorneys' fees and costs pursuant, including but not limited to il Penalties under California Labor
9 Code § 2699 in the amount of a hundred dollars (\$100) for each Aggrieved Employee per pay
10 period for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per
11 pay period for each subsequent violation;

12 57. Attorney's fees and costs pursuant to Labor Code § 2699(g) and any other applicable
13 statute.

14 59. and the proper measure of damages and penalties under the PAGA is as to all Aggrieved
15 Employees, whether a part of this action or not. Further this claim needs no certification to
16 proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

17 60. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in
18 her favor including civil penalties under California Labor Code §2699 in the amount of one
19 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
20 two hundred dollars (\$200) each for each Aggrieved Employee per pay period for each
21 subsequent violation during the relevant period, according to proof.

22 61. Plaintiff as the personal representative of the Aggrieved Employees, will and does
23 seek to recover any and all penalties for each and every violation shown to exist or to have
24 occurred during the liability period, in an amount according to proof, as to those penalties that are
25 otherwise only available to public agencies. Said fund recovered will be distributed in
26 accordance with the PAGA, with at least 75 percent of said PAGA penalty recovery being
27 reimbursed to the State of California and the LWDA.

28 **PRAYER FOR RELIEF**

1 1. WHEREFORE, Plaintiff pursuant to PAGA, prays for judgment as follows:

2 2. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code
3 § 2698 *et seq.*, for Defendant's violations of Labor Code §§ *California Labor Code* §§ 201, 202,
4 203, 204, 226 (a), 226.7, 510, 512, 1174(d), 1194, 2802 and the *Industrial Wage Commission* No.
5 5-2001, Sections 11 and 12.

6 3. Upon the Cause of Action for penalties pursuant to Labor Code Section 1199; and

7 4. Attorneys' fees and costs pursuant to Labor Code § 2699, and any other applicable statute;
8 and

9 5. For such other and further relief, the court may deem just and proper.

10
11 Dated: August 6, 2021

WHITEHEAD EMPLOYMENT LAW

12
13 By:  _____

Jacob N. Whitehead,
Attorneys for Plaintiff and
similarly-situated Aggrieved Employees

EXHIBIT A



May 28, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via USPS First Class Mail

Lucy Grayson, CEO
The California Home for the Aged, Inc.
6720 E. Kings Canyon Road
Fresno, California 93727

Via Certified Mail

Richard M. Aaron, Registered Agent
The California Home for the Aged, Inc.
8080 N. Palm Avenue
Fresno, California 93711

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that Lorena Vidal ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly situated current and former employees (the "Aggrieved Employees") against The California Home for the Aged, Inc., a California corporation, and Does 1 through 20 (hereinafter "Defendants") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable California employment laws.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as non-exempt, hourly, full time employees including, but not limited to, medical technicians or other similarly situated positions (the "Covered Positions"). This notice formally serves to notify Defendants of Plaintiff's intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to, claims for Defendants' failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to pay overtime; failure to maintain accurate records of all hours worked; failure to furnish accurately itemized wage statements; failure to timely pay all wages twice monthly; failure to timely pay all wages due to Plaintiff and the Aggrieved Employees who ceased employment with Defendants during the statutory period upon their separation or termination of employment; and failure to reimburse work-related expenses.

Based upon these violations, as further detailed below, Defendants violated numerous provisions of the California Labor Code including, but not limited to, violations of Labor Code §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1174 (d), 2802, and Industrial Welfare Commission Wage Order No. 5-2001 (IWC No. 5).

Plaintiff was formerly employed by Defendants from approximately May 22, 2019, until approximately April 23, 2021, as a full time, hourly compensated, non-exempt medical technician who was responsible for assisting patients with daily living activities and ensuring safe handling of patient medications.

During the relevant statutory period, Plaintiff and the Aggrieved Employees were often unable to take timely and compliant rest and meal breaks. Due to understaffing, Plaintiff and the Aggrieved Employees were frequently interrupted while on their meal breaks with questions from supervisors and staff regarding patients. Management was aware that Plaintiff and the Aggrieved Employees were on their meal breaks as they were routinely interrupted while in the designated break room. Sometimes Plaintiff and the Aggrieved Employees would completely miss a meal break or would take it well past the 5th hour of work. When this occurred, management pressured employees into signing a statement waiving the right to their entitled premium pay penalties. On multiple occasions, Plaintiff's supervisor threatened her with a written warning if she refused to sign the meal premium waiver. Furthermore, Plaintiff and the Aggrieved Employees rarely, if ever, received rest breaks during the relevant statutory period. Such practice is in violation of California Labor Code §§ 226.7 and 512.

Plaintiff and the Aggrieved Employees were required to use their personal cell phones to communicate with supervisors and staff without reimbursement from Defendants. Plaintiff frequently received text messages on her personal cell phone from supervisors regarding patients. Plaintiff received text messages on her personal cell phone after work hours and was expected to respond by Defendants. Defendants never provided Plaintiff and the Aggrieved Employees with a cell phone reimbursement. Defendants' failure to reimburse Plaintiff and the Aggrieved Employees for the utilization of their personal cell phone for work related purposes is in violation of California Labor Code § 2802.

In addition, Plaintiff was not compensated for the time that she spent communicating with supervisors and staff after work hours. Management was aware that Plaintiff was not on duty and continued to communicate with her regarding work related tasks. The time Plaintiff and certain of the Aggrieved Employees spent communicating with staff after their scheduled work hours were/are not tracked by Defendants. As such, Defendants have violated Labor Code §§ 204, 1174 (d), 510 and 226.

Due to the foregoing-described actions, Defendants have unlawfully failed to pay all wages due upon termination to Plaintiff and those Aggrieved Employees who ceased their employment relationship with Defendants during the statutory period.

Plaintiff is informed and believes, and thereon alleges that the above-described violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Order No. 5, section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

As stated, during the relevant statutory period, Plaintiff and the Aggrieved Employees, were rarely able to take compliant, timely and duty-free rest breaks. Staff and supervisors frequently interrupted Plaintiff and the Aggrieved Employees while on their meal breaks with questions regarding patients and medications. Incredibly, management pressured Plaintiff and certain of the Aggrieved Employees to waive their right to premium pay penalties on occasions when they punched out late or completely missed a meal break.

As such, Defendants have not paid premium pay penalties for all missed and non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 5 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

205.5 , 206 , 206.5 , 208 , 209 , and 212, subdivision (d) of § 213 , § s 221 , 222 , 222.5 , 223 , and 224 , paragraphs (1) to (5) , inclusive, (7) , and (9) of subdivision (a) of § 226 , § s 226.7 , 227 , 227.3 , 230 , 230.1 , 230.2 , 230.3 , 230.4 , 230.7 , 230.8 , and 231, subdivision (c) of § 232 , subdivision (c) of § 232.5 , § s 233 , 234 , 351 , 353 , and 403, subdivision (b) of § 404 , § s 432.2 , 432.5 , 432.7 , 435 , 450 , 510 , 511 , 512 , 513 , 551 , 552 , 601 , 602 , 603 , 604 , 750 , 751.8 , 800 , 850 , 851 , 851.5 , 852 , 921 , 922 , 923 , 970 , 973 , 976 , 1021 , 1021.5 , 1025 , 1026 , 1101 , 1102 , 1102.5 , and 1153, subdivisions (c) and (d) of § 1174 , § s 1194 , 1197 , 1197.1 , 1197.5 , and 1198, subdivision (b) of § 1198.3 , § s 1199 , 1199.5 , 1290 , 1292 , 1293 , 1293.1 , 1294 , 1294.1 , 1294.5 , 1296 , 1297 , 1298 , 1301 , 1308 , 1308.1 , 1308.7 , 1309 , 1309.5 , 1391 , 1391.1 , 1391.2 , 1392 , 1683 , and 1695, subdivision (a) of § 1695.5 , § s 1695.55 , 1695.6 , 1695.7 , 1695.8 , 1695.9 , 1696 , 1696.5 , 1696.6 , 1697.1 , 1700.25 , 1700.26 , 1700.31 , 1700.32 , 1700.40 , and 1700.47 , § s 1735 , 1771 , 1774 , 1776 , 1777.5 , 1811 , 1815 , 2651 , and 2673, subdivision (a) of § 2673.1 , § s 2695.2 , 2800 , 2801 , 2802 , 2806 , and 2810, subdivision (b) of § 2929 , and § s 3073.4, 6310, 6311, and 6399.7.

Pursuant to § 512 of the Labor Code and section 12 (B) of IWC No. 5, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed or noncompliant rest and meal break for which they were not paid during the statutory period.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.*

As stated above, it was common for Plaintiff and the Aggrieved Employees to work during their meal breaks. In addition, Plaintiff and certain of the Aggrieved Employees were contacted by supervisors and staff via text message after their scheduled work hours and were expected to respond. The time Plaintiff and certain of the Aggrieved Employees spent communicating with staff after work hours is/was not tracked by Defendants. Labor Code § 204 has been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *“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.”*

As indicated above, Plaintiff and the Aggrieved Employees often worked off the clock during their meal breaks without proper overtime compensation. In addition, Plaintiff and certain of the Aggrieved Employees were expected to communicate with staff and supervisors after hours regarding work related tasks without overtime compensation.

As Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period, Labor Code § 510 (a) has been violated and Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney’s fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”*

As indicated above, Plaintiff and the Aggrieved Employees were often required to work during their rest and meal breaks due to frequent interruptions from staff and supervisors.

Defendants also did not pay for overtime worked by Plaintiff and the Aggrieved Employees. The time Plaintiff and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendants in violation of Labor Code § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants' unlawful business and compensation practices under the Labor Code and IWC No. 5, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendants to *"furnish each of [its] 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 itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, 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."*

As indicated above, Plaintiff and the Aggrieved Employees often work/worked during their meal breaks and after work hours. Hours worked off the clock are/were not recorded, were not recorded at the proper pay rate, and premium pay was not accurately recorded as management pressured Plaintiff and certain of the Aggrieved Employees to waive their right to premium pay penalties.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendants violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay All Wages Earned Twice Monthly

At all times relevant, Labor Code § 200 was in force and effect. Subdivision (a) of § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Subdivision (b) of Section 200 defines "labor" as all work or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

At all times relevant, Labor Code § 204 was in force and effect. Subdivision (a) of § 204 requires employers to pay employees all wages earned no less than twice monthly. As a result of Defendants' failure to pay Plaintiff and the Aggrieved Employees all overtime compensation they earned, Defendants likewise violated Labor Code section 204 by failing to pay them all wages earned no less than twice monthly.

At all times relevant, Labor Code § 210 was in force and effect. Labor Code § 210 provides in relevant part that an employer that violates Labor Code § 204 is subject to a penalty of one hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld.

As a result of Defendants' willful and intentional violations of Labor Code § 204, Defendants are liable to Plaintiff and the Aggrieved Employees for the penalties described above.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, 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.

During the statutory period, when Plaintiff and certain of the Aggrieved Employees' employment relationships with Defendants terminated, Defendants failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants have failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work-Related Expenses

Labor Code § 2802(a) provides, *"An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."*

As described above, the Plaintiff and the Aggrieved Employees were required to utilize their personal cell phones to communicate with staff and supervisors during and after work hours without being reimbursed by Defendants. Defendants violated Labor Code § 2802 and Plaintiff and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorneys' fees, penalties and interest thereon as permitted by § 2802.

Conclusion

In sum, as has been factually alleged, Defendants violated among other statutes and regulations §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1174 (d), 2802, and Industrial Welfare Commission Wage Order No. 5-2001 (IWC No. 5). Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest, and attorneys' fees and civil penalties as provided under Labor Code § 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform her if it does not intend to investigate these violations so that she may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW

A handwritten signature in blue ink, appearing to read 'JN Whitehead', is positioned above the printed name.

Jacob N. Whitehead

JNW/eem

EXHIBIT B



August 6, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via Email

dkrauthamer@fisherphillips.com
Danielle S. Krauthamer, Esq.
Fisher & Phillips LLP

Via Certified Mail

Richard M. Aaron, Registered Agent
The California Home for the Aged, Inc.
8080 N. Palm Avenue
Fresno, California 93711

Re: First Amended Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA") Case No. LWDA-CM-833555-21

Dear Sir(s) and/or Madam:

Please be advised that Lorena Vidal ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly situated current and former employees (the "Aggrieved Employees") against The California Home for the Aged, Inc., a California corporation, and Does 1 through 20 (hereinafter "Defendants") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable California employment laws. Plaintiff filed a Notice with the LWDA on May 28, 2021. This First Amended Notice serves to amend the Notice filed on May 28, 2021.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as non-exempt, hourly, full-time employees including, but not limited to, medical technicians, caregivers, housekeepers and other similarly situated positions (the "Covered Positions"). This notice formally serves to notify Defendants of Plaintiff's intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to, claims for Defendants' failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to pay overtime; failure to maintain accurate records of all hours worked; failure to furnish accurately itemized wage statements; failure to timely pay all wages twice monthly; failure to timely pay all wages due to Plaintiff and the Aggrieved Employees who ceased employment with Defendants during the statutory period upon their separation or termination of employment; failure to reimburse work-related expenses; and Defendants unlawfully requiring Plaintiff and certain of the Aggrieved Employees to agree in writing to terms/conditions prohibited by law.

Based upon these violations, as further detailed below, Defendants violated numerous provisions of the California Labor Code including, but not limited to, violations of Labor Code §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1174 (d), 1194(a), 2802, 432.5 and Industrial Welfare Commission Wage Order No. 5-2001 (IWC No. 5).

Plaintiff was formerly employed by Defendants from approximately May 22, 2019, until approximately April 23, 2021, as a full time, hourly compensated, non-exempt medical technician who was responsible for assisting patients with daily living activities and ensuring safe handling of patient medications.

During the relevant statutory period, Plaintiff and the Aggrieved Employees were often unable to take timely and compliant rest and meal breaks. Due to understaffing, Plaintiff and the Aggrieved Employees were frequently interrupted while on their meal breaks with questions from supervisors and staff regarding patients and medications. Management was aware that Plaintiff and the Aggrieved Employees were on their meal breaks as they were routinely interrupted while in the designated break room. Sometimes Plaintiff and the Aggrieved Employees would completely miss a meal break or would take it well past the 5th hour of work. Defendants' time keeping system was designed to automatically provide Plaintiff and the Aggrieved Employees meal premiums when they clocked out late for their meal breaks. However, when this occurred, management pressured employees into signing a meal premium waiver, waiving their rights to their entitled premium for the missed or untimely meal period. On multiple occasions, Plaintiff's supervisor even threatened her with a written warning if she refused to sign the meal premium waiver. Plaintiff and the Aggrieved Employees are entitled to premiums for missed or untimely meal periods under IWC No. 5. Therefore, it is unlawful for Defendants to threaten Plaintiff and the Aggrieved Employees with disciplinary action and require them to sign a written statement waiving their right to meal premiums. Furthermore, Plaintiff and the Aggrieved Employees rarely, if ever, received rest breaks during the relevant statutory period due to chronic understaffing. Such practice is in violation of California Labor Code §§ 226.7, 512, and 432.5.

Plaintiff and the Aggrieved Employees were required to use their personal cell phones to communicate with supervisors and staff without reimbursement from Defendants. Plaintiff frequently received text messages from supervisors on her personal cell phone regarding patients and medications. Plaintiff received text messages on her personal cell phone even after work hours, on her personal time, and was expected to respond by Defendants. Defendants never provided Plaintiff and the Aggrieved Employees with a cell phone reimbursement. Defendants' failure to reimburse Plaintiff and the Aggrieved Employees for the utilization of their personal cell phone for work related purposes is in violation of California Labor Code § 2802.

In addition, Plaintiff was not compensated for the time that she spent communicating with supervisors and staff after work hours. Management was aware that Plaintiff was not on duty and continued to communicate with her regarding work related tasks. The time Plaintiff and certain of the Aggrieved Employees spent communicating with staff after their scheduled work hours were/are not tracked by Defendants. As such, Defendants have violated Labor Code §§ 204, 1174 (d), 510 and 226.

Due to the foregoing-described actions, Defendants have unlawfully failed to pay all wages due upon termination to Plaintiff and those Aggrieved Employees who ceased their employment relationship with Defendants during the statutory period.

Plaintiff is informed and believes, and thereon alleges that the above-described violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendants under the PAGA to recover civil penalties and for injunctive relief as provided by California law.¹

Rest/Meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Order No. 5, section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

As stated, during the relevant statutory period, Plaintiff and the Aggrieved Employees, were rarely able to take compliant, timely and duty-free rest breaks. Staff and supervisors frequently interrupted Plaintiff and the Aggrieved Employees while on their meal breaks with questions regarding patients and medications. Incredibly, management pressured Plaintiff and certain of the Aggrieved Employees to waive their right to meal premiums on occasions when they punched out late or completely missed a meal break.

As such, Defendants have not paid meal premiums for all missed and non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 5 which set forth California employers' affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to § 512 of the Labor Code and section 12 (B) of IWC No. 5, Plaintiff and the Aggrieved Employees are owed civil penalties for each missed or noncompliant rest and meal break for which they were not paid during the statutory period.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states "*All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.*"

Under Labor Code §1194 (a) "*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.*"

As stated above, it was common for Plaintiff and the Aggrieved Employees to work during their meal breaks. In addition, Plaintiff and certain of the Aggrieved Employees were contacted by supervisors and staff via text message after their scheduled work hours and were expected to respond. The time Plaintiff and certain of the Aggrieved Employees spent communicating with staff after work hours is/was not tracked by Defendants. Labor Code § 204 and 1194 (a) have been violated and Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for hours spent working while off the clock as well as their attorney's fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, "*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.*"

As indicated above, Plaintiff and the Aggrieved Employees often worked off the clock during their meal breaks without proper overtime compensation. In addition, Plaintiff and certain of the Aggrieved Employees were expected to communicate with staff and supervisors after hours regarding work related tasks without overtime compensation.

As Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period, Labor Code § 510 (a) has been violated and Plaintiff and the Aggrieved Employees are entitled to recover civil penalties as well as their attorney's fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”*

As indicated above, Plaintiff and the Aggrieved Employees were often required to work during their rest and meal breaks due to frequent interruptions from staff and supervisors. Defendants also did not pay for overtime worked by Plaintiff and the Aggrieved Employees. The time Plaintiff and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendants in violation of Labor Code § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants' unlawful business and compensation practices under the Labor Code and IWC No. 5, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendants to *“furnish each of [its] 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 itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, 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.”*

As indicated above, Plaintiff and the Aggrieved Employees often work/worked during their meal breaks and after work hours. Hours worked off the clock are/were not recorded, were not recorded at the proper pay rate, and premium pay was not accurately recorded as management pressured Plaintiff and certain of the Aggrieved Employees to waive their right to premium pay penalties.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendants violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross

wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay All Wages Earned Twice Monthly

At all times relevant, Labor Code § 200 was in force and effect. Subdivision (a) of § 200 defines “wages” as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Subdivision (b) of Section 200 defines “labor” as all work or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

At all times relevant, Labor Code § 204 was in force and effect. Subdivision (a) of § 204 requires employers to pay employees all wages earned no less than twice monthly. As a result of Defendants’ failure to pay Plaintiff and the Aggrieved Employees all overtime compensation they earned, Defendants likewise violated Labor Code section 204 by failing to pay them all wages earned no less than twice monthly.

At all times relevant, Labor Code § 210 was in force and effect. Labor Code § 210 provides in relevant part that an employer that violates Labor Code § 204 is subject to a penalty of one hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld.

As a result of Defendants’ willful and intentional violations of Labor Code § 204, Defendants are liable to Plaintiff and the Aggrieved Employees for the penalties described above.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, 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.

During the statutory period, when Plaintiff and certain of the Aggrieved Employees’ employment relationships with Defendants terminated, Defendants failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants have failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work-Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*”

As described above, the Plaintiff and the Aggrieved Employees were required to utilize their personal cell phones to communicate with staff and supervisors during and after work hours without being reimbursed by Defendants. Defendants violated Labor Code § 2802 and Plaintiff and the Aggrieved Employees seek civil penalties as well as their attorney’s fees as permitted by § 2802.

Requiring Employees to Agree in Writing to Illegal Terms (Labor Code 432.5)

Per Labor Code 432.5 “No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

As indicated above, when Plaintiff and the Aggrieved Employees clocked out for their meal breaks after the fifth hour of work or when their meal breaks were completely missed, Defendants’ timekeeping system was designed to automatically record a meal premium. However, when this occurred, Defendants required Plaintiff and the Aggrieved Employees to sign meal premium waivers, which waived their right to their entitled meal premiums. If Plaintiff and the Aggrieved refused to sign the meal premium waiver, Defendants threatened them with disciplinary action

Meal break premiums are protected under IWC Wage Order No. 5 (see above) and requiring such waivers of meal premiums is unlawful. Furthermore, Plaintiff and the Aggrieved Employees were required to sign such waivers out of fear of losing their jobs or facing disciplinary action. Defendants have violated Labor Code 432.5 by forcing the Plaintiff and Aggrieved employees to sign a waiver of their entitled meal premiums for missed or untimely meal breaks.

Conclusion

In sum, as has been factually alleged, Defendants violated among other statutes and regulations §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1174 (d), 1194(a), 2802, 432.5 and Industrial Welfare Commission Wage Order No. 5-2001 (IWC No. 5). Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover civil penalties as provided under Labor Code § 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA’s provisions. Alternatively, Plaintiff requests the agency inform her if it does not intend to investigate these violations so that she may bring a civil action under the PAGA for the violations alleged herein.

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Development Agency
August 6, 2021
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Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW

A handwritten signature in blue ink, appearing to read 'J. Whitehead', with a stylized flourish extending to the right.

Jacob N. Whitehead

JNW/eem