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ENDORSED
FILED
ALAMEDA COUNTY

JUL 29 2021

CLERK OF THE SUPERIOR COURT
By JERRIE COOPER Deputy

Attorneys for Plaintiff MARTA AGUILAR, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of herself and other current and former employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA COUNTY**

MARTA AGUILAR, on behalf of herself and
all others aggrieved employees,

Plaintiff,

v.

ELDER CARE ALLIANCE OF SAN
RAFAEL, a California Corporation; and DOES
1- 50, Inclusive,

Defendant,

Case No.

COMPLAINT

1. Civil Penalties under the Private Attorneys
General Act (PAGA)

RG210753

1 Plaintiff, MARTA AGUILAR (“Plaintiff”), as a representative of the State of California
2 and the Labor and Workforce Development Agency (LWDA), and on behalf of herself and other
3 current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of Plaintiff and other aggrieved employees, to collect
7 civil penalties for Defendant’s Labor Code violations.

8 2. Defendant and employer, ELDER CARE ALLIANCE OF SAN RAFAEL
9 (“Defendant”), violated numerous wage and hour laws with respect to Plaintiff and other
10 aggrieved employees by failing to provide, for example: accurate and itemized wages statements,
11 payment for all hours worked (including regular wages and overtime), failure to provide a
12 minimum wage lawful meal periods, lawful rest periods, timely payment during employment,
13 failure to reimburse for expenses incurred during the course and scope of employment, and
14 payment upon separation of employment.

15 **PARTIES**

16 **The Plaintiff**

17 3. Plaintiff is, and at all times herein mentioned was, a resident of the County of
18 Alameda. Similarly aggrieved, former and/or current employees are those non-exempt
19 employees employed by Defendant during the relevant time period who were subject to the same
20 wage and hour policies/practices as Plaintiff, and thereby suffered similar or substantially similar
21 violations (“Aggrieved Employees”).

22 **The Defendant**

23 4. Defendant ELDER CARE ALLIANCE OF SAN RAFAEL is a California
24 corporation which, at all relevant times mentioned herein, existing, doing business and employing
25 individuals in the County of Alameda, State of California. Plaintiff is informed and thereon
26 alleges that Defendant exercised control over Plaintiff and Aggrieved Employees’ wages, hours,
27 and working conditions.

28 5. The true names and capacities, whether individual, corporate, associate, or

1 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
2 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
3 amend this Complaint to insert the true names and capacities of said Defendants when the same
4 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
5 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
6 therefore liable to Plaintiff as alleged hereinafter.

7 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times
8 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
9 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
10 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
11 least in part within the course and scope of said agency, employment, conspiracy, joint
12 employment, alter ego status, and/or joint venture and with the permission and consent of each of
13 the other Defendants.

14 7. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
15 and each of them, including those Defendants named DOES 1-50, acted in concert with one
16 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
17 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
18 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
19 each of them, including those Defendants named as DOES 1-50, formed and executed a
20 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
21 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
22 to and actually causing Plaintiff harm.

23 8. Whenever and wherever reference is made in this Complaint to any act or failure
24 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
25 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
26

27 **JURISDICTION AND VENUE**

28 9. Venue is proper in Alameda County, because Defendant maintain its locations

1 and transacts business in this county, the obligations and liability primarily arise in this county,
2 and work was primarily performed by Plaintiff and other aggrieved employees in this county.

3 10. The California Superior Court has jurisdiction over this matter. The individual
4 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
5 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
6 amount required for diversity removal. Further, there is no federal question at issue as the issues
7 herein are based solely on California statutes and law, including, but not limited to, the California
8 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
9 and California Rules of Court.

10 **GENERAL ALLEGATIONS**

11 11. Defendant employed Plaintiff as a caregiver from on or about October 1, 2017 to
12 the present.

13 12. At all relevant times herein, Defendant employed Plaintiff and other Aggrieved
14 Employees as non-exempt employees. Aggrieved Employees mean and refers to all persons who
15 worked for Defendant as all non-exempt employees at any time during the specified relevant
16 time period and were subject to the same wage and hour practices and policies as Plaintiff.

17 13. On many occasions, Plaintiff and Aggrieved Employees would work more than
18 8 hours per day or 40 hours per week without overtime pay. Plaintiff and similarly Aggrieved
19 Employees would not receive all compensable work time or their work time was illegally
20 rounded.

21 14. Defendant regularly did not have enough employees to provide sufficient
22 coverage to maintain their business operations so Plaintiff and similarly Aggrieved Employees
23 could not take complete, timely and uninterrupted meal and rest breaks.

24 15. In an effort to curtail labor costs, Plaintiff is informed and believes, and thereon
25 alleges that Defendant regularly and consistently did not have enough staff employees to provide
26 sufficient coverage to both maintain their business operations and provide legally mandated meal
27 and rest periods, despite reasonably foreseeable work load, so Plaintiff and similarly Aggrieved
28

1 Employees could not take complete, timely and uninterrupted meal and rest breaks because
2 Defendant prioritized completion of daily duties ahead of meal and rest period compliance.

3 16. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
4 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
5 departments, divisions, commissions, boards, agencies or employees for violation of the code
6 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
7 behalf of himself or herself and other current or former employees pursuant to the procedures
8 specified in Labor Code section 2699.3.

9 17. For all provisions of the Labor Code except those for which a civil penalty is
10 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
11 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
12 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
13 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.
14

15 18. Defendant's conduct during the PAGA period with respect to Plaintiff and the
16 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

17 19. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and
18 hour violations under the California Labor Code and IWC Wage Orders.

19 20. At all relevant times herein, Defendant employed Plaintiff and other Aggrieved
20 Employees as non-exempt employees.

21 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
22 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages
23 for all hours worked, including the applicable minimum, regular, and overtime wages, and that
24 they were not receiving all wages earned for work that was required to be performed. In violation
25 of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved
26 Employees for all hours worked. Accordingly, Defendant failed to pay Plaintiff and Aggrieved
27 Employees all earned minimum, regular, and/or overtime compensation.

28 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew

1 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
2 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
3 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
4 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
5 and policy of not providing timely meal periods. Defendant failed to pay an additional hour of
6 pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendant's
7 unlawful policy and practice, Plaintiff and Aggrieved Employees did not receive all meal periods
8 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular
9 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

10 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
11 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
12 required rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
13 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
14 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
15 and policy of not providing timely rest periods. Defendant failed to pay an additional hour of
16 pay to Plaintiff and Aggrieved Employees for each rest periods was not provided or was
17 interrupted. As a result of Defendant's unlawful policy and practice, Plaintiff and Aggrieved
18 Employees did not receive all required rest periods or payment of one (1) additional hour of pay
19 at Plaintiff's and Aggrieved Employees' regular rate of pay when they did not receive a timely,
20 uninterrupted 10 minute off-duty rest period.

21 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
22 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
23 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
24 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
25 time periods, upon separation of employment.

26 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
27 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
28

1 wage statements that accurately showed their actual hours worked, total hours worked, number
2 of hours worked at each hourly rate, gross and net wages earned, and correct employer
3 information in accordance with California law. In violation of the Labor Code, Plaintiff and
4 Aggrieved Employees were not provided with accurate itemized wage statements that accurately
5 reported their gross and net wages earned, total hours worked, each applicable rate of pay in
6 effect during the pay period with the corresponding number of hours worked, and the address of
7 the legal entity that is the employer, among other things.

8 26. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
9 should have known that Defendant was required to maintain accurate records of the hours
10 worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendant failed
11 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
12 unfair rounding practices, among other things.

13
14
15 **FIRST CAUSE OF ACTION**

16 **(Civil Penalties Under the Private Attorneys General Act,**
17 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

18 27. By this complaint, Plaintiff brings this case as a representative action seeking
19 penalties for herself, the Aggrieved Employees, and the State of California in a representative
20 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
21 employee who was employed by Defendant and subject to at least one of the Labor Code
22 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
23 her notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
24 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

25 28. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
26 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
27 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
28 not to investigate, or after 65 days have passed without notice from the LWDA.

1 five hours of the shifts worked. Defendant failed to pay Plaintiff one hour's pay at Plaintiff's
2 regular rate of pay for each day Defendant failed to provide a meal period in compliance with
3 section 512.

4 **SECOND VIOLATION**

5 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

6 35. Under California Labor Code §226.7(b), "An employer shall not require an
7 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
8 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

9 36. Industrial Welfare Commission (IWC) provides, "Every employer shall authorize
10 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
11 of each work period. The authorized rest period time shall be based on the total hours worked
12 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

13 37. Defendant failed to authorize and permit Plaintiff and other employee to take rest
14 periods and mandated by the Wage Order.

15 38. Under §226.7(c), an employer who violates §226.7(b), "...shall pay the employee
16 one additional hour of pay at the employee's regular rate of compensation for each workday that
17 the meal or rest or recovery period is not provided."

18 39. Defendant failed to pay Plaintiff and other employees who were not provided rest
19 periods one hour of pay at their regular rate of pay.

20 **THIRD VIOLATION**

21 **(Failure to Provide Complete and Accurate Wage Statements,**
22 **in Violation of Labor Code Section 226)**

23 40. Under California Labor Code §226(a), an employer is legally obligated to provide
24 its employees, semi-monthly or at the time of payment of wages, "an accurate itemized statement
25 in writing..."

26 41. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
27 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
28

1 Labor Code § 2699.

2 **FOURTH VIOLATION**

3 **(Failure to Pay Overtime Wages)**

4 42. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
5 employer is required to compensate employees for all overtime, which is calculated at one and
6 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
7 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
8 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
9 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
10 any workweek.

11 43. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
12 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
13 Labor Code § 2699.

14 **FIFTH VIOLATION**

15 **(Failure to Pay Minimum Wages)**

16 44. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
17 payment to an employee of less than the applicable minimum wage for all hours worked in a
18 payroll period is unlawful.

19 45. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
20 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
21 Labor Code § 2699.

22 **SIXTH VIOLATION**

23 **(Failure to Timely Pay Wages During Employment)**

24 46. Pursuant to California Labor Code § 204, for all labor performed between the 1st
25 and 15th days of any calendar month, an employer is required to pay its employees between the
26 16th and 26th day of the month during which the labor was performed. California Labor Code §
27 204 also provides that for all labor performed between the 16th and 26th days of any calendar
28

1 month, Defendants are required to pay their employees between the 1st and 15th day of the following calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

47. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

SEVENTH VIOLATION

(Failure to Pay All Wages Due to Discharged and Quitting Employees)

48. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

49. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For penalties in an amount according to proof;
2. For reasonable attorney's fees and costs pursuant to the PAGA; and
3. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

Dated: July 28, 2021

WORK LAWYERS, PC

By: May T. To
May T. To, Esq.
Attorney for Plaintiff

Exhibit A

7020 2450 0002 0253 6114

Janice Washburn
Agent for Services of Process
2361 E. 29 St.
Oakland, CA 94606

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