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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

JONATHAN W. ADAMS, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

HACIENDA POST ACUTE, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 21C-0143

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);**
- (3) **FAILURE TO PAY REPORTING
TIME PAY (LABOR CODE §§ 204,
1198)**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (6) **FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (7) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (8) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203); and**
- (9) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 *et seq.*);**
- (10) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jonathan W. Adams (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Hacienda Post Acute, Inc., a California Corporation; and DOES 1 to 100,
4 inclusive (collectively, “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194,
9 1194.2, 1197, 1198, 2802, 2804, 2698 *et. seq.*, and Industrial Welfare Commission Wage Order
10 4 (“Wage Order 4”), in addition to seeking declaratory relief and restitution. This Complaint is
11 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Kings County. Defendants own, maintain offices, transact business, have an agent or
18 agents within Kings County, and/or otherwise are found within Kings County, and Defendants
19 are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and is a California resident. Within the statute of limitations periods applicable to
23 each cause of action herein, Plaintiff was employed by Defendants as a non-exempt employee.
24 Plaintiff is a victim of Defendants’ policies and/or practices complained of herein, lost money
25 and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226,
26 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et. seq.*, Business
27 & Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 4, which sets
28 employment standards for professional, technical, clerical, mechanical, and similar occupations.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the statute
2 of limitations applicable to each cause of action alleged herein, Defendants did (and continue to
3 do) business by owning and operating nursing homes that provide skilled nursing and long-term
4 care, and have employed Plaintiff and other, similarly-situated non-exempt employees within
5 Kings County and the state of California and, therefore, were (and are) doing business in Kings
6 County and the State of California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, and for that reason, said defendants
9 are sued under such fictitious names, and Plaintiff will seek leave from this Court to further amend
10 this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
11 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the
14 unlawful employment practices, wrongs, injuries and damages complained of herein.

15 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

17 7. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants, and employees of each and every one of
20 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
21 were acting within the course and scope of said agency and employment. Defendants, and each
22 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
23 omissions complained of herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
28 members of the Classes.

1 **GENERAL FACTUAL ALLEGATIONS**

2 9. Defendants own and operate nursing homes that provide skilled nursing and long-
3 term care. Plaintiff worked for Defendants as a non-exempt employee in the positions of
4 “Maintenance” and “Central Supply” from approximately March 2020 through approximately
5 September 2020.

6 10. During Plaintiff’s employment with Defendants, Defendants utilized a
7 timekeeping system which resulted in Plaintiff and other non-exempt employees not being
8 compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise.
9 Specifically, Plaintiff clocked in and out for his shifts by using a hand scanner and entering the
10 last four digits of his social security number into a machine; however, although Defendants
11 recorded employees’ hours worked to the minute, Defendants only paid Plaintiff and other non-
12 exempt employees in quarter-hour increments. Defendant’s rounding and/or shaving of time
13 entries was not even-handed over time, and has resulted in Plaintiff and other non-exempt
14 employees being deprived of all earned wages, including minimum wages for all hours worked,
15 and overtime wages on those occasions when they worked over eight hours in a workday and/or
16 forty hours in a workweek.

17 11. During Plaintiff’s employment with Defendants, Plaintiff sometimes worked more
18 than 40 hours in a workweek but Defendants failed to pay him overtime for all such hours worked.
19 On information and belief, Defendants only paid daily overtime but did not pay weekly overtime
20 when Plaintiff worked over 40 hours in a workweek.

21 12. As noted above, Plaintiff sometimes worked overtime hours, including hours in
22 excess of eight hours per workday and/or 40 forty hours per workweek. However, even when
23 Defendants did pay Plaintiff overtime pay, they did not pay overtime compensation equal to one
24 and one-half times his “regular rate” of pay for working overtime hours. Specifically, Plaintiff
25 received non-discretionary incentive pay, including but not limited to “HERO” pay and/or other
26 forms of pay that are not excludable from the “regular rate” of pay as a matter of law (hereinafter
27 the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Defendants
28 failed to accurately calculate Plaintiff’s regular rate of pay as a result of receiving Incentive Pay,

as Plaintiff was only paid one-and-a-half times his base rate of pay, thereby causing Plaintiff to be underpaid all his required overtime wages.

13. Defendants failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods because they fail to provide their employees with a timely, 30-minute meal period commencing before the end of the fifth hour of work. Specifically, Plaintiff's and other non-exempt employees' meal periods are regularly "late" (i.e., starting after the completion of the fifth hour of work). For example, Plaintiff often began work before 7:00 a.m., but was not provided a meal period until well after 12:00 p.m. Further, Defendants' meal period policies/practices failed to provide Plaintiff and other non-exempt employees with a second 30-minute meal period on occasions where they worked over 10.0 hours in a workday. Defendants have further failed to compensate Plaintiff and other non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

14. Defendants' rest period policies/practices also failed to authorize and permit Plaintiff and other non-exempt employees all rest periods to which they were entitled. Specifically, Defendants required Plaintiff and other non-exempt employees to remain on Defendants' premises during rest periods, thereby failing to relinquish all control over their employees during rest periods as required under California law. In addition, Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take a third rest period on shifts of over 10.0 hours. On those occasions where Plaintiff was not provided with all legally compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium wages under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

1 15. Upon information and belief, Defendants have also failed to compensate Plaintiff
2 and other non-exempt employees for all required reporting time pay. When Plaintiff was working
3 as “maintenance,” Plaintiff was regularly called into work for a second shift and/or on the
4 weekend but was not always put to work and/or was sent home after as little as twenty minutes.
5 When this happened, upon information and belief, Defendants did not compensate Plaintiff for at
6 least two hours of work and/or half of his usually scheduled hours at his regular rate of pay. For
7 instance, on August 19, 2020, after Plaintiff worked a full shift from 7:02 a.m. to 3:29 p.m.,
8 Defendants required Plaintiff to return to work for a second shift from 4:49 p.m. to 6:19 p.m.
9 Despite requiring Plaintiff to report to work for a second shift, Defendants only paid Plaintiff an
10 additional 1.52 hours. Plaintiff alleges that this policy and practice is in violation of the reporting
11 time pay requirements under California law, including Wage Order 4, § 5, and as a result,
12 Defendants have failed to pay Plaintiff and other non-exempt employees for all required reporting
13 time pay.

14 16. Defendants also failed to adequately reimburse Plaintiff and other non-exempt
15 employees for all reasonable and necessary work expenditures, including, but not limited to, use
16 of personal cellular phones to communicate with management. Despite requiring Plaintiff and
17 other non-exempt employees to use their personal cell phones for work-related purposes,
18 Defendants did not reimburse Plaintiff and other employees for their cellular phone expenses.

19 17. As a result of Defendants’ failure to pay all earned minimum and overtime wages,
20 and failure to pay all meal and rest period premium wages and all reporting time pay, Defendants
21 maintained inaccurate payroll records, issued inaccurate wage statements to Plaintiff, and failed
22 to pay Plaintiff all wages owed at the time of his separation of employment with Defendants.

23 18. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations
24 of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020.
25 Accordingly, the relevant time period for each cause of action pled herein has been calculated to
26 include 178 days preceding the filing of this action.

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CLASS ACTION ALLEGATIONS

19. **Class Definitions:** Plaintiff bring this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8 hours in a workday and/or more than 40 hours in a workweek and: (i) were subject to Defendants' timekeeping practices; (ii) received Incentive Pay during a corresponding time period that overtime hours were worked; and/or (iii) worked more than 40 hours in a workweek and were not paid overtime wages for such time worked, during the four years and 178 days immediately preceding the filing of this action through the present.
- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping practices during the four years and 178 days immediately preceding the filing of this action through the present.
- c. The Reporting Time Class consists of all of Defendants' current and former non-exempt employees in California who reported to work and were provided less than two hours of work and/or less than half their regularly scheduled hours worked, on at least one occasion during the four years and 178 days immediately preceding the filing of this action to the present.
- d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who (i) worked at least one shift of 3.5 hours or more; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years and 178 days immediately preceding the filing of this action through the present.
- e. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years and 178 days immediately preceding the filing of this action through the present.

f. The Employee Expense Class consists of all of Defendants' current and former employees who used their personal cellular phones for work purposes, during the four years and 178 days immediately preceding the filing of the Complaint through the present.

g. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Reporting Time Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year and 178 days immediately preceding the filing of this action through the present.

h. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage Class, Reporting Time Class, Meal Period Class, and/or Rest Period Class who separated their employment during the three years and 178 days immediately preceding the filing of this action through the present.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members, including, without limitation:

i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime Class and Minimum Wage Class for all hours worked;

ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, sections 510 and 1194 by requiring members of the Overtime Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;

- 1 iii. Whether Defendants provided all reporting time pay to members of the Reporting
2 Time Class pursuant to Wage Order 4 § 5, Labor Code §§ 204 and 1198;
3 iv. Whether Defendants provided all legally compliant meal periods to members of
4 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
5 v. Whether Defendants authorized and permitted all legally compliant rest periods to
6 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
7 vi. Whether Defendants provided meal and/or rest period premium payments for non-
8 compliant meal and/or rest periods;
9 vii. Whether Defendants' policies and/or practices regarding business expenditures
10 resulted in the failure to properly reimburse members of the Employee Expense
11 Class;
12 viii. Whether Defendants furnished legally compliant wage statements to members of
13 the Wage Statement Class pursuant to Labor Code § 226; and
14 ix. Whether Defendants paid all compensation due upon separation to members of the
15 Waiting Time Class pursuant to Labor Code sections 201-203.

16 22. **Predominance of Common Questions:** Common questions of law and fact
17 predominate over questions that affect only individual members of the Classes. The common
18 questions of law set forth above are numerous and substantial and stem from Defendants' policies
19 and/or practices applicable to each individual class member, such as Defendants' payment of
20 overtime and minimum wages, rest period policies/practices, meal period policies/practices, and
21 reimbursement policies/practices. As such, common questions predominate over individual
22 questions concerning each individual class member's showing as to their eligibility for recovery
23 or as to the amount of their damages.

24 23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
25 Plaintiff was and is employed by Defendants as non-exempt employee in California during the
26 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
27 herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime and
28 minimum wages, was not paid all required reporting time pay, was not authorized and permitted

1 to take all legally-compliant rest periods, was not provided all required meal periods, was not
2 reimbursed for all necessary business expenses, was not paid all final wages at the time of his
3 termination, and was not provided with accurate wage statements.

4 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
5 to represent fairly and adequately the interests of the members of the Classes. Moreover,
6 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
7 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
8 and-hour class actions in state and federal courts in the past and are committed to vigorously
9 prosecuting this action on behalf of the members of the Classes.

10 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
11 an important public interest in establishing minimum working conditions and standards in
12 California. These laws and labor standards protect the average working employee from
13 exploitation by employers who have the responsibility to follow the laws and who may seek to
14 take advantage of superior economic and bargaining power in setting onerous employment terms
15 and conditions. The nature of this action and the format of laws available to Plaintiff and members
16 of the Classes make the class action format a particularly efficient and appropriate procedure to
17 redress the violations alleged herein. If each employee were required to file an individual lawsuit,
18 Defendants would necessarily gain an unconscionable advantage since they would be able to
19 exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior
20 financial and legal resources. Moreover, requiring each Class member of the Class(es) to pursue
21 an individual remedy would also discourage the assertion of lawful claims by employees who
22 would be disinclined to file an action against their former and/or current employer for real and
23 justifiable fear of retaliation and permanent damages to their careers at subsequent employment.
24 Further, the prosecution of separate actions by the individual class members, even if possible,
25 would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to
26 the individual class members against Defendants herein; and which would establish potentially
27 incompatible standards of conduct for Defendants; and/or legal determinations with respect to
28 individual class members which would, as a practical matter, be dispositive of the interest of the

1 other class members not parties to adjudications or which would substantially impair or impede
2 the ability of the class members to protect their interests. Further, the claims of the individual
3 members of the Classes are not sufficiently large to warrant vigorous individual prosecution
4 considering all of the concomitant costs and expenses attending thereto. As such, the Classes
5 identified in Paragraph 18 are maintainable under Cal. Code Civ. Proc. § 382.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

9 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
11 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
12 overtime hours worked, and provide a private right of action for the failure to pay all overtime
13 wages for overtime work performed.

14 28. At all times relevant herein, Defendants were required to properly compensate
15 non-exempt employees, including Plaintiff and Overtime Class members, for all overtime hours
16 worked per Labor Code §§ 510 and 1194 and Wage Order 4. Wage Order 4, § 3 requires an
17 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
18 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
19 workweek, and to pay double the employee’s regular rate of pay for work in excess of twelve
20 hours each workday and/or for work in excess of eight hours on the seventh consecutive workday
21 in a workweek. Defendants caused Plaintiff to work overtime hours, but did not pay Plaintiff or
22 Overtime Class members at the proper overtime or double-time rate of pay for such hours.

23 29. Defendants’ policy/practice of requiring overtime work and not paying at the
24 proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558,
25 1194, and 1198; and Wage Order 4.

26 30. The foregoing policies/practices alleged herein are unlawful and create entitlement
27 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
28 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,

attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 558, 1194, and 1198; Civil Code §§ 3287 and 3289, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. Wage Order 4, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 4.

33. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

34. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to Wage Order 4 § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

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(AGAINST ALL DEFENDANTS)

36. Wage Order 4, § 5 provides that “[e]ach workday an employee is required to report to work and does report, but is not put to work or is furnished less than half said employee’s scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, shall be compensated at the employees regular rate of pay, which shall not be less than the minimum wage. Wage Order 4, § 5 establishes a guarantee of at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of an employer’s unexcused late scheduling or lack of proper notice by the employer.

38. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Reporting Time Class in a civil action for the unpaid amount of reporting time pay, including interest thereon, attorney's fees and costs of suit according to California Labor Code §§ 204, 218.5, 218.6, and 1198, Civil Code §§ 3287 and 3289, and Code of Civil Procedure § 1021.5.

(AGAINST ALL DEFENDANTS)

40. Wage Order 4, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198
 sh the right of employees to be authorized and permitted to take a paid rest period of at
 n (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

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41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required and legally-compliant rest periods and failed to pay rest period premium wages when rest periods were not authorized and permitted.

42. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Wage Order 4, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide their California non-exempt employees, including Plaintiff and Meal Period Class members, with legally-compliant meal periods in accordance with the mandates of the Labor Code and Wage Order 4, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and Meal Period Class members at their regular rates of compensation, in accordance with Labor Code §§ 204, 210, 226.7, and 512.

45. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 4, and Civil Code §§ 3287(b) and 3289.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENDITURES

(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. Based on information and belief, Defendants required Plaintiff and members of the Employee Expense Class to use their personal cellular phones for business purposes but failed to provide adequate reimbursement.

1 48. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
2 states that, “[a]n employer shall indemnify his or her employee for all necessary expenditures or
3 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
4 his or obedience to the directions of the employer.”

5 49. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
6 states that, “[a]ny contract or agreement, express or implied, made by any employee to waive the
7 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
8 employee or his personal representative of any right or remedy to which he is entitled under the
9 laws of this State.”

10 50. As a proximate result of Defendants’ policies and/or practices in violation of Labor
11 Code §§ 2802 and 2804, and Wage Order 4, § 9, Plaintiff and members of the Employee Expense
12 Class were damaged in sums, which will be shown according to proof.

13 51. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
14 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

15 52. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
16 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
17 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
18 from the date on which they incurred the necessary expenditure.

19 **SEVENTH CAUSE OF ACTION**

20 **WAGE STATEMENT VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 54. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
25 and members of the Wage Statement Class with complete and accurate wage statements with
26 respect to their actual hours worked, total gross wages earned, all rates of pay, total net wages
27 earned, and the name and/or address of the legal entity that is the employer, in violation of Labor
28 Code § 226 *et seq.*

1 55. Defendants' failures in furnishing Plaintiff and members of the Wage Statement
2 Class with complete and accurate itemized wage statements resulted in actual injury, as said
3 failures led to, among other things, the non-payment of all their overtime and minimum wages,
4 meal period premium wages, rest period premium wages, and other wages, and deprived them of
5 the information necessary to identify the discrepancies in Defendants' reported data, as well as
6 the failure to identify the address of the entity that is the employer.

7 56. Defendants' failures create an entitlement to recovery by Plaintiff and members of
8 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
9 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
10 costs of suit according to California Labor Code § 226 *et seq.*

11 **EIGHTH CAUSE OF ACTION**

12 **WAITING TIME PENALTIES**

13 **(AGAINST ALL DEFENDANTS)**

14 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 58. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
16 an employer to pay all wages immediately at the time of termination of employment in the event
17 the employer discharges the employee or the employee provides at least 72 hours of notice of his
18 or her intent to quit. In the event the employee provides less than 72 hours of notice of his or her
19 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
20 employee's last date of employment.

21 59. Defendants failed to timely pay Plaintiff all of his final wages at the time of his
22 separation from employment, which include, among other things, underpaid overtime and
23 minimum wages and meal and rest period premium wages. Further, Plaintiff is informed and
24 believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants
25 continue to fail to pay members of the Waiting Time Class all earned wages at the end of their
26 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
27 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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60. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus interest, reasonable attorneys' fees, and costs of suit.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

62. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to properly pay all minimum and overtime wages, failing to pay reporting time pay, failing to provide all required meal periods and authorize and permit all required rest periods, failure to pay premium payments for missed or non-compliant meal and rest periods, and failure to reimburse for all necessary business expenses.

63. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

64. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

65. The acts complained of herein occurred within the last four years and 178 days immediately preceding the filing of this action.

66. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **TENTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEY GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 67. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 68. Defendants have committed several Labor Code violations against Plaintiff,
9 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
10 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
11 employees, brings this representative action against Defendants to recover the civil penalties due
12 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
13 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited
14 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
15 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
16 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
17 each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per
18 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
19 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
20 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
21 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
22 subsequent violation per employee per pay period for those violations of the Labor Code for
23 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 24 a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or all
25 double time compensation earned in violation of Labor Code §§ 204, 210, 216,
26 510, 558, 1194, and 1198;

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28 ///

- b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to authorize and permit Plaintiff and other aggrieved employees their statutorily mandated rest periods and failing to pay rest period premiums at the employees' respective regular rates of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to provide Plaintiff and other aggrieved employees all legally required meal periods and failing to pay meal period premiums at the employees' respective regular rates of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to reimburse and/or indemnify Plaintiff and other similarly aggrieved employees for all necessary work expenditures incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to pay Plaintiff and other aggrieved employees with reporting time pay on those occasions when they were owed reporting time pay in violation of Labor Code §§ 1198-1199 and Wage Order 4, § 5;
- g. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to pay Plaintiff and similarly aggrieved employees all final wages owed at the termination of their employment in violation of Labor Code §§ 201-203;
- i. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice each calendar month in violation of Labor Code § 204; and
- j. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code § 1174.

69. On or about May 12, 2021, Plaintiff notified Defendants via certified mail and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for

1 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
2 California Labor Code identified in Paragraph 68 (a)-(j). Now that sixty-five days have passed
3 from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
4 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
5 administrative requirements for bringing a claim under the Private Attorneys General Act with
6 respect to these violations.

7 70. Based on the foregoing, Plaintiff seeks to represent himself, the State of California,
8 and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and
9 former non-exempt employees who worked for Defendants in California at any time from one
10 year and 178 days prior to the submission of Plaintiff's PAGA notice to the present.

11 71. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect his interest and the interests of other aggrieved employees, and to assess and collect the
13 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
14 he is entitled to recover under California Labor Code § 2699.

15 **PRAYER**

16 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
17 this suit is brought against Defendants, as follows:

- 18 1. For an order certifying the proposed Classes;
- 19 2. For an order appointing Plaintiff as representative of the Classes;
- 20 3. For an order appointing counsel for Plaintiff as Counsel for the Classes;
- 21 4. Upon the First Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 23 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
24 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
25 1197, and 1198;
- 26 6. Upon the Third Cause of Action, for payment of reporting time pay according to
27 proof, pursuant to Labor Code §§ 204 and 1198 and Wage Order 4, § 5;

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1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

3 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

5 9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and
6 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

7 10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code
8 § 226, *et seq.*;

9 11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to
10 Labor Code §§ 201-203;

11 12. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the
12 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
13 practices declared by this Court to be in violation of Bus. & Prof. Code § 17200 *et seq.*;

14 13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other
15 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
16 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
17 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
18 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
19 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
20 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
21 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
22 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
23 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
24 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
25 period for those violations of the Labor Code for which no civil penalty is specifically provided,
26 based on the violations of Labor Code sections identified in Paragraph 68 (a)-(j) above.

27 14. Prejudgment interest on all due and unpaid wages and other damages pursuant to
28 California Labor Code §§ 218.6 and 2802(c) and Civil Code §§ 3287 and 3289;

1 15. On all causes of action, for attorneys' fees and costs as provided by Labor Code
2 §§ 226, 218.5, 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

3 16. For such other and further relief the Court may deem just and proper.

4
5 Dated: July 19, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

6
7 By: _____



Paul K. Haines
Attorneys for Plaintiff

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9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

12
13 Dated: July 19, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

14
15 By: _____



Paul K. Haines
Attorneys for Plaintiff

Jonathan W. Adams v. Hacienda Post Acute, Inc.
Kings County Superior Court Case No. 21C-0143

[illegible]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On July 19, 2021, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Ann K. Smith, Esq.
Email: asmith@aalrr.com
ATKINSON, ANDELSON, LOYA, RUUD & ROMO
12800 Center Court Drive South, Suite 300
Cerritos, California 90703
Attorneys for Defendant Hacienda Post Acute, Inc.

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 19, 2021, at El Segundo, California.


Jackie Hernandez