

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq., CA Bar No. 285256
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, P.C.

Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ERLINDA REYES, on behalf of herself and all
others similarly situated,

Plaintiffs,

v.

VITAS HEALTHCARE CORPORATION OF
CALIFORNIA, a Delaware Corporation; and
DOES 1-50, inclusive.

Defendants.

CASE NO.: 21CV383092

**SECOND AMENDED CLASS & PAGA
ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) REST PERIOD VIOLATIONS;
- (4) MEAL PERIOD VIOLATIONS
- (5) WAGE STATEMENT VIOLATIONS;
;
- (6) FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES;
- (7) WAITING TIME PENALTIES;
- (8) FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT
- (9) UNFAIR COMPETITION; and
- (10) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 **WOODALL LAW OFFICES**
2 Kevin Woodall, Esq., CA Bar No. 180650
3 *kevin@kwoodalllaw.com*
4 100 Pine Street, Suite 1250
5 San Francisco, CA 94111
6 Tel: (415) 413-4629
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28 Attorneys for Plaintiffs and the Putative Class

1 Plaintiffs Erlinda Reyes and Jazzina Williams (hereinafter “Plaintiffs”) on behalf of
2 themselves, and all other similarly situated employees, allege and complain of defendants VITAS
3 Healthcare Corporation of California, and DOES 1 to 50 (collectively, “Defendants”) and each of
4 them, as follows:

5 **INTRODUCTION**

6 1. Defendant VITAS Healthcare Corporation of California operates 49 hospice programs
7 in 14 states, including California. Defendants employ thousands of professionals who care for patients
8 with advanced illness, primarily in the patients’ homes, and in its 28 inpatient hospice units as well
9 as in hospitals, nursing homes and assisted living communities/residential care facilities for the
10 elderly. Plaintiffs brings this class action against Defendants for alleged violations of the California
11 Labor Code and Business and Professions Code.

12 2. As set forth below, Plaintiffs allege that Defendants had a uniform payroll
13 practice/policy that unfairly rounded Plaintiffs’ and other similarly situated non-exempt employees’
14 time entries and which over time resulted in a failure to pay for all hours worked. Plaintiffs further
15 allege that Defendants failed to pay all overtime compensation at the legal rate, and that Defendants
16 failed to provide Plaintiffs and all other similarly situated employees with compliant meal and rest
17 periods, or premium wages at the regular rate of pay in lieu thereof. Additionally, Plaintiffs allege
18 that Defendants failed to provide non-exempt employees with accurate written itemized wage
19 statements, failed to reimburse for necessary business expenditures, and failed to timely pay final
20 wages during employment and upon separation of employment. Based on these alleged Labor Code
21 violations, Plaintiffs now bring this class action to recover unpaid wages, restitution, penalties, and
22 other related relief on behalf of herself and all others similarly situated.

23 **JURISDICTION AND VENUE**

24 3. Plaintiffs, on behalf of themselves and all others similarly situated employees hereby
25 bring this class action for recovery of unpaid wages and penalties under California Labor Code §§
26 201-203, 204, 210, 226a, 226.7, 510, 516, 512, 1182.12, 1194, 1194.2, 1197, 2802-2804, 2698 *et seq.*
27 and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking
28 declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et.*

1 *seq.* This class action is brought pursuant to California Code of Civil Procedure § 382.

2 4. This Court has jurisdiction over Defendants' violations of the California Labor Code
3 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional
4 minimum.

5 5. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
6 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County
7 of Santa Clara. Defendants own, maintain offices, transact business, have an agent or agents within
8 the County of Santa Clara, and/or otherwise are found within the County of Santa Clara, and
9 Defendants are within the jurisdiction of this Court for purposes of service of process.

10 **PARTIES**

11 6. At all relevant times herein, Plaintiffs, who are over the age of 18, were and currently
12 are California residents residing in the State of California. Defendants employed Plaintiffs as non-
13 exempt employees in the County of Santa Clara and/or other counties.

14 7. Plaintiffs are informed and believe and thereon allege that defendant VITAS
15 Corporation of California is a Delaware corporation authorized to and doing business in Santa Clara
16 County, California, and is and/or was the legal employer of Plaintiffs and the Class Members during
17 the applicable statutory periods.

18 8. Plaintiffs were, and are, victims of Defendants' policies and/or practices complained
19 of herein and have been deprived of the rights guaranteed to their by California Labor Code §§ 201-
20 203, 204, 210, 226(a), 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 2802-2804, California
21 Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

22 9. Plaintiffs are informed and believe, and based thereon allege, that during the four years
23 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
24 do) business in the State of California, County of Santa Clara.

25 10. Plaintiffs do not know the true names or capacities, whether individual, partner, or
26 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
27 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
28 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed,

1 and believe, and thereon allege, that each of said fictitious defendants, whether individual, partners,
2 or corporate, were responsible in some manner for the acts and omissions alleged herein, and
3 proximately caused Plaintiffs and the Classes to be subject to the unlawful employment practices
4 alleged herein.

5 11. Plaintiffs are informed, and believes, and thereon allege, that at all times mentioned
6 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes. At all
7 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
8 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
9 them, were the agents, servants, and employees of each and every one of the other Defendants, as
10 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
11 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
12 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

13 12. At all times mentioned herein, Defendants, and each of them, were members of and
14 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
15 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
16 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
17 members of the Classes.

18 **COMMON FACTUAL ALLEGATIONS**

19 13. Plaintiffs were employed by Defendants as non-exempt employees with the title of
20 “Home Health Aide”. Plaintiffs and other non-exempt employees were employed in various positions
21 working for Defendants’ expansive network across California. At all relevant times, Plaintiffs and
22 other non-exempt employees regularly worked various shifts, many of which were in excess of 8.0
23 hours in a workday and 40.0 hours in a workweek. Plaintiffs alleges that other non-exempt employees
24 were also subjected to the same policies, procedures, and practices, working conditions, and
25 corresponding wage and hour violations to which Plaintiffs was subjected during their employment
26 with Defendants.

27 14. At all relevant times, Defendants had a consistent policy of rounding Plaintiffs and
28 other non-exempt employees’ time entries to the nearest quarter hour. As a result of this practice,

1 Plaintiffs and other non-exempt employees are not compensated for all the hours that they work and
2 all of the overtime hours they work, in violation of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1,
3 1199, and applicable Wage Orders.

4 15. The Court in *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907,
5 held that rounding time policies can be lawful, "if the rounding policy is fair and neutral on its face
6 and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate
7 the employees properly for all the time they have actually worked,' (29 C.F.R. § 785.48; see DLSE
8 Manual, *supra*, §§ 47.1, 47.2.)."

9 16. Here, Defendants' rounding time policy is not neutral on its face as Plaintiffs and other
10 non-exempt employees are subject to discipline, including termination for being tardy in reporting to
11 work, or returning from a meal period. Moreover, because Defendants are capable of tracking the
12 time worked by non-exempt employees to the minute, the policy itself exists not for the convenience
13 or benefit of the employees who are trying to report their time on timecards or otherwise, but for
14 Defendants' benefit. As a result, the policy is not neutral on its face, and over a period of time,
15 Plaintiffs and other non-exempt employees were not properly paid for all hours worked in violation
16 of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

17 17. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
18 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
19 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
20 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
21 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
22 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
23 underpaid regardless of whether the initial violation is intentionally committed. As set forth above,
24 Defendants failed to compensate Plaintiffs and other non-exempt employees for all hours worked.
25 Accordingly, through PAGA and to the extent permitted by law Plaintiffs and other non-exempt
26 employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

27 18. Moreover, at all relevant times, Plaintiffs and other non-exempt employees worked
28 regular shifts that lasted longer than 8.0 hours in a workday and resulted in Plaintiffs and other non-

1 exempt employees regularly working more than 40 hours in a workweek. However, on information
2 and belief, non-exempt employees were not properly paid at the correct overtime rate for all overtime
3 hours worked due to Defendants' uniform failure to include all forms of compensation/renumeration,
4 including, but not limited to, non-discretionary bonus payments and/or "California Stipend" in
5 calculating the regular rate of pay for purposes of overtime compensation.

6 19. Under the California Labor Code (as well as the FLSA), courts have held that regularly
7 paid non-discretionary compensation must be included in determining an employee's "regular rate of
8 pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-
9 856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating
10 the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal.
11 2006) [granting summary judgement to Plaintiffs under California and federal law on the grounds,
12 that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from
13 the "regular rate of compensation"].)

14 20. At all relevant times, Defendants consistently paid Plaintiffs and other non-exempt
15 employees non-discretionary compensation/renumeration as well as overtime pay, however these
16 forms of compensation were uniformly omitted when calculating non-exempt employees' regular rate
17 of pay for overtime purposes.

18 21. Labor Code § 510 requires an employer to compensate an employee who works more
19 than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0)
20 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular
21 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less
22 than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a
23 workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section
24 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0)
25 hours in any workday or more than 40.0 hours in any workweek unless the employee receives one
26 and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in
27 the workweek.

1 22. By their policy of requiring non-exempt employees to work in excess of eight (8)
2 hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the rate
3 of one-half their regular rate of pay, Defendants willfully violated the provisions of Labor Code §
4 510 and the applicable Wage Orders.

5 23. Furthermore, because of Defendants' operational and work requirements, including
6 but not limited to a requirement to carry and communicate using a work cellphone that remained on
7 their persons during meal periods, Plaintiffs and other non-exempt employees regularly did not
8 receive all legally compliant meal periods, including first meal periods of 30 minutes prior to the 5th
9 hour of their shifts and a second meal period before the 10th hour as required by California law.
10 Specifically, Plaintiffs and other non-exempt employees were often unable to take legally compliant
11 meal periods, and/or had their meal periods cut short due to interruption by supervisors, staffing
12 shortages and work demands.

13 24. Moreover, Defendants do not have a procedure in place to provide meal period
14 premiums for missed or noncompliant meal periods at the "regular rate of pay." As such, each time
15 Plaintiffs and other non-exempt employees were unable to take a compliant meal period, Defendants
16 failed and continue to fail to adequately pay meal period premium payments at the "regular rate of
17 pay" as required by Labor Code § 226.7 and *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
18 858.

19 25. Accordingly, due to Defendants' uniform meal period policies/practices and
20 operational requirements, Plaintiffs and other non-exempt employees were denied legally compliant
21 meal periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

22 26. Furthermore, at all relevant times, Plaintiffs and other non-exempt employees were
23 also not provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction
24 thereof as mandated by California law. Specifically, in light of the stringent work demands imposed
25 by Defendants, including but not limited to a requirement to carry and communicate using a work
26 cellphone that remained on their persons during rest periods, Plaintiffs and other non-exempt
27 employees were often unable to take compliant rest periods of 10 minutes time for every 4 hours
28 worked, or major fraction thereof. On occasions when Plaintiffs and other non-exempt employees

1 worked more than 10.0 hours in a shift, Defendants failed to authorize and/or permit a third mandated
2 rest break. Finally, Plaintiffs and other non-exempt employees were not provided rest period
3 premiums at the regular rate of pay for their missed or non-compliant rest breaks.

4 27. Accordingly, due to Defendants' uniform rest period policies/practices, Plaintiffs and
5 other non-exempt employees were also regularly denied legally compliant rest breaks in violation of
6 Labor Code 226.7, 512, and applicable Wage Orders.

7 28. As a result of Defendants' failure to pay and timely pay Plaintiffs and other non-
8 exempt employees for all hours they were subject to the control of Defendants, including all minimum
9 and overtime wages, failure to adequately compensate Plaintiffs and other non-exempt employees at
10 the appropriate legal overtime rate, and failure to pay for rest period premiums for missed/non-
11 compliant meal and rest periods, Defendants issued wage statements which failed to accurately
12 identify the gross wages earned, the total hours worked, the net wages earned, and the correct
13 corresponding number of hours worked at each hourly rate, in violation of Labor Code §226(a) (1, 2,
14 5, and 9).

15 29. Labor Code § 226(a) obligates employers, semi-monthly or at the time of each
16 payment to furnish an itemized wage statement in writing showing:

- 17 (1) gross wages earned;
- 18 (2) total hours worked by the employee;
- 19 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
20 paid on a piece rate;
- 21 (4) all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item;
- 23 (5) net wages earned;
- 24 (6) the inclusive dates of the period for which the employee is paid;
- 25 (7) the name of the employee and only the last four digits of his or her social security
26 number or an employee identification number other than a social security number;
- 27 (8) the name and address of the legal entity that is the employer; and
- 28 (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.

30. Plaintiffs are informed and believe that Defendants uniformly furnished inaccurate
and non-compliant wage statements to Plaintiffs and other non-exempt employees which failed to
include the applicable hourly rates (including applicable overtime rate) in effect during all pay

1 periods.

2 31. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
3 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
4 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
5 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
6 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

7 32. Thus, for the violations of Labor Code section 226 described above, Plaintiffs and
8 other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’
9 violations of Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiffs and
10 other non-exempt employees are in violation of Labor Code § 226 (a)(9). Consequently, because
11 Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiffs and
12 other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

13 33. Moreover, at all relevant times, Defendants failed and continue to fail to reimburse
14 Plaintiffs and other non-exempt employees for necessary business expenditures, including but not
15 limited to, mileage reimbursement. Specifically, Defendants uniformly underpaid mileage
16 reimbursement pay to Plaintiffs and other non-exempt employees by, amongst other things, listing
17 the reimbursement as “Earnings” and taxing non-exempt employees on mileage, which is a
18 reimbursable business expenditure. Defendant also failed to reimburse non-exempt employees for
19 mileage traveled between their home offices and customer/client locations. As a result, Defendants
20 uniformly underpaid Plaintiffs and other non-exempt employees for mileage reimbursements and thus
21 failed to comply with Labor Code § 2802 and applicable Wage Orders.

22 34. Finally, because of, Defendants’ failure to pay all minimum and overtime wages, rest
23 and meal period premiums at the regular rate of pay for non-compliant meal and rest periods,
24 Defendants also failed and continues to fail to pay Plaintiffs and other non-exempt employees all
25 wages owed on a twice-per-month basis (at least) under Labor Code §§ 204 and 210 and at their time
26 of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.
27 Thus, Plaintiffs and other non-exempt employees would be entitled to recover penalties under Labor
28 Code §§ 201-203, 204 and 210.

1 **CLASS ACTION ALLEGATIONS**

2 35. Plaintiffs bring this action on behalf of herself and the following Classes pursuant to §
3 382 of the Code of Civil Procedure:

- 4 (1) All non-exempt employees who work or worked for Defendants in
5 California from May 16, 2019, through the date of trial. (“Class”);
- 6 (2) All non-exempt employees who worked for Defendants in California and
7 who worked overtime hours during at least one shift and earned any non-
8 discretionary compensation/renumeration, from May 16, 2019, through the
9 date of trial. (“Overtime Subclass”)
- 10 (3) All non-exempt employees who worked for Defendants in California, and
11 who have separated their employment with Defendants during one year
12 immediately preceding the filing of the Complaint through the date of trial.
13 (“Waiting Time Subclass”)
- 14 (4) All employees who work or worked for Defendants in California and who
15 received at least one wage statement, during the one year immediately
16 preceding the filing of the Complaint through the date of trial
17 (“Wage Statement Subclass”); and
- 18 (5) All non-exempt employees who work or worked for Defendants in
19 California and who were not properly reimbursed for necessary business
20 expenditures, from May 16, 2019, through the date of trial.
21 (collectively “the Classes”)

22 36. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
23 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
24 unknown to Plaintiffs at this time; however, it is estimated that the Classes consist of at least one
25 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
26 Defendants’ employment and payroll records.

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

1 1. Whether Defendants' rounding timekeeping policies/practices resulted in a
2 failure to pay for all hours worked to the members of the Classes;

3 2. Whether Defendants' payroll policies/practices resulted in a failure to pay
4 overtime at the appropriate premium rate resulted to members of the Overtime Subclass;

5 3. Whether Defendants provided legally compliant meal and rest periods or
6 compensation in lieu thereof to members of the Classes;

7 4. Whether Defendants furnished legally compliant wage statements to members
8 of the Wage Statement Subclass pursuant to Labor Code § 226(a);

9 5. Whether the timing and amount of payment of final wages to members of the
10 Waiting Time Subclass at the time of separation from employment were unlawful; and

11 6. Whether Defendants adequately reimbursed members of the Reimbursement
12 Subclass for all necessary business expenditures in violation of Labor Code §§ 2802-2804.

13 38. **Predominance of Common Questions:** Common questions of law and fact
14 predominate over questions that affect only individual members of the Classes. The common
15 questions of law set forth above are numerous and substantial and stem from Defendants' policies
16 and/or practices applicable to each individual class member, such as Defendants' uniform rounding
17 policy/practice, policy/practice of failing to account for non-discretionary
18 compensation/remuneration in calculating employees' regular rate for overtime purposes,
19 Defendants' uniform practice of failing to provide compliant meal and rest periods, and Defendants'
20 resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon
21 separation of employment. As such, the common questions predominate over individual questions
22 concerning each individual class member's showing as to his or her eligibility for recovery or as to
23 the amount of his or her damages.

24 39. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because
25 Plaintiffs were employed by Defendants as a non-exempt employee in California during the statute(s)
26 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
27 Plaintiffs, like the members of the Classes was deprived of minimum and overtime wages, were
28 deprived of rest period premium wages, were subject to Defendants' uniform meal and rest period

1 policies/practices, were not provided accurate itemized wage statements, were not properly
2 reimbursed for necessary business expenditures, including, but not limited to, mileage
3 reimbursement, and were not paid all wages owed at the time of their separation of employment.

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

10 41. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
11 important public interest in establishing minimum working conditions and standards in California.
12 These laws and labor standards protect the average working employee from exploitation by
13 employers who have the responsibility to follow the laws and who may seek to take advantage of
14 superior economic and bargaining power in setting onerous terms and conditions of employment. The
15 nature of this action and the format of laws available to Plaintiffs and members of the Classes make
16 the class action format a particularly efficient and appropriate procedure to redress the violations
17 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
18 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
19 limited resources of each individual Plaintiffs with their vastly superior financial and legal resources.

20 42. Moreover, requiring each member of the Classes to pursue an individual remedy would
21 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
22 against their former and/or current employer for real and justifiable fear of retaliation and permanent
23 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
24 the individual class members, even if possible, would create a substantial risk of inconsistent or
25 varying verdicts or adjudications with respect to the individual class members against Defendants
26 herein; and which would establish potentially incompatible standards of conduct for Defendants;
27 and/or legal determinations with respect to individual class members which would, as a practical
28 matter, be dispositive of the interest of the other class members not parties to adjudications or which

1 would substantially impair or impede the ability of the class members to protect their interests.
2 Further, the claims of the individual members of the class are not sufficiently large to warrant
3 vigorous individual prosecution considering all of the concomitant costs and expenses attending
4 thereto. As such, the Classes identified in Paragraph 32 are maintainable as Classes under § 382 of
5 the Code of Civil Procedure.

6 **FIRST CAUSE OF ACTION**
7 **MINIMUM WAGE VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

9 43. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

10 44. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
11 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
12 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
13 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
14 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
15 the unpaid wages and interest accrued thereon.

16 45. At all relevant times herein, Defendants failed to conform their pay practices to the
17 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
18 and unlawful practice of rounding Plaintiffs' and members of the Classes' time entries, which resulted
19 in these individuals not being paid for all hours actually worked. Defendants also failed to pay for
20 all hours worked. Accordingly, Plaintiffs and members of the Classes were not compensated for all
21 hours worked including, but not limited to, all hours they were subject to the control of Defendants
22 and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.
23 Further, Plaintiffs are informed and believe that Defendants' policies and practices resulted in
24 Plaintiffs and members of the Classes not getting paid proper reporting time pay when reporting to
25 work and not being furnished with half of their scheduled shifts.

26 46. Labor Code § 1198 makes unlawful the employment of an employee under conditions
27 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
28 who has failed to pay its employees the legal minimum wage is liable to pay those employees the

1 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
2 due and interest thereon.

3 47. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
4 Plaintiffs and the Classes have sustained economic damages, including but not limited to unpaid
5 wages and lost interest, in an amount to be established at trial, and they are entitled to recover
6 economic and statutory damages and penalties and other appropriate relief as a result of Defendants'
7 violations of the California Labor Code and applicable Wage Orders.

8 48. Defendants' practice and uniform administration of corporate policy regarding illegal
9 employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs and members
10 of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages,
11 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
12 Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY ALL OVERTIME WAGES**

15 **(AGAINST ALL DEFENDANTS)**

16 49. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

17 50. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
18 and 1198, which provide those non-exempt employees are entitled to overtime wages for all overtime
19 hours worked and provide a private right of action for the failure to pay all overtime compensation
20 for overtime work performed.

21 51. At all times relevant herein, Defendants were required to properly pay Plaintiffs and
22 members of the Classes and Overtime Subclass for all overtime hours worked pursuant to California
23 Labor Code § 1194 and the applicable Wage Orders.

24 52. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
25 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
26 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
27 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
28 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in

1 the workweek. Defendants caused Plaintiffs to work overtime and hours but did not compensate
2 Plaintiffs or members of the Classes at one and one-half times their regular rate of pay for such hours.

3 53. Defendants failed to conform their pay practices to the requirements of the law. This
4 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
5 (1) rounding non-exempt employees time entries; (2) failing to account for all non-discretionary
6 compensation/renumeration in calculating the regular rate for calculating members of the Classes and
7 Overtime Subclass overtime rate which resulted in these individuals not being paid all overtime wages
8 owed; and (3) not paying for all hours worked.

9 54. The foregoing policies and practices are unlawful and create entitlement to recovery
10 by Plaintiffs and the members of the Classes and Overtime Subclass in a civil action for the unpaid
11 amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs
12 of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and
13 Code of Civil Procedure § 1021.5.

14 **THIRD CAUSE OF ACTION**

15 **REST PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 55. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

18 56. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
19 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
20 each four (4) hour period worked, or major fraction thereof.

21 57. Due to their unlawful rest period policy and practices, Defendants did not authorize
22 and permit Plaintiffs and members of the Classes to take any rest periods to which they were legally
23 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to
24 Plaintiffs and members of the Classes at their respective regular rates of pay for each violation, in
25 accordance with California Labor Code § 226.7.

26 58. The foregoing violations create an entitlement to recovery by Plaintiffs and members
27 of the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest
28 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§

226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

59. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

60. Plaintiffs are informed and believe, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiffs and members of the Classes, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Allegations section of this Complaint.

61. As a result, Defendants are responsible for paying premium compensation for meal period violations at the regular rate of pay, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

62. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

63. Labor Code 226(a) states in pertinent part the following:

“(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision

1 (b) of Section 1682, the name and address of the legal entity that secured the
2 services of the employer, and (9) all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the
4 employee.”

5 64. As set forth above, during the Class Period, Defendants issued and continue to issue
6 wage statements to its employees including Plaintiffs and members of the Wage Statement Penalty
7 Subclass, which are inadequate under Labor Code Section 226(a).

8 65. As a result of Defendants failure to pay Plaintiffs and the Classes for all minimum
9 wages and overtime wages at the appropriate legal rate, and meal and rest period premiums at the
10 regular rate of pay, Defendants failed to include required information on Plaintiffs and the Classes’
11 wage statements, including, but not limited to, the gross wages earned, the net wages earned in
12 violation of Labor Code section 226a. Additionally, Defendants’ wage statements issued failed to
13 provide the applicable hourly rates for each type of pay in violation Labor Code Section 226(a)(9).

14 66. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
15 and intentional.

16 67. As a result of Defendants’ issuance of inaccurate itemized wage statements to
17 Plaintiffs and members of the Wage Statement Subclass in violation of section 226(a) of the
18 California Labor Code, Plaintiffs and members of the Wage Statement Subclass are each entitled to
19 recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
20 an aggregate penalty of \$4,000 per Plaintiffs and per every member of the Wage Statement Subclass
21 from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

24 **(AGAINST ALL DEFENDANTS)**

25 68. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

26 69. It was necessary for Plaintiffs and members of the Reimbursement Subclass to incur
27 various expenses as outlined herein above in the discharge of their job duties. These expenses include
28 but are not limited to expenses associated with mileage and the use of a personal cell phone. Although

1 Plaintiffs and members of the Classes incurred these expenses at the direction of Defendants and/or
2 in the direct discharge of their job duties, Defendants did not adequately reimburse these employees
3 for such necessary work expenditures because, amongst other things, the reimbursement payments of
4 mileage pay were taxed as “Earnings” and therefore underpaid in violation of Labor Code § 2802.
5 Defendant also failed to reimburse for mileage when non-exempt employees travelled from their
6 home offices to customer/client locations.

7 70. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
8 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
9 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
10 obedience to the directions of the employer.”

11 71. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
12 states that “any contract or agreement, express or implied, made by any employee to waive the
13 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
14 employee or his personal representative of any right or remedy to which he is entitled under the laws
15 of this State.”

16 72. As a proximate result of Defendants’ policies and/or practices in violation of Labor
17 Code §§ 2802 and 2804, Plaintiffs and members of the Classes were damaged in sums, which will be
18 shown according to proof at trial.

19 73. Plaintiffs and members of the Reimbursement Subclass are entitled to attorneys’ fees
20 and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

21 74. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
22 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiffs
23 and members of the Reimbursement Subclass are entitled to interest, which shall accrue from the date
24 on which they incurred the initial necessary expenditure.

25 **SEVENTH CAUSE OF ACTION**

26 **WAITING TIME PENALTIES**

27 **(AGAINST ALL DEFENDANTS)**

28 75. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

1 76. The actionable period for this cause of action is three years prior to the filing of this
2 Complaint through the present, and on-going until the violation are corrected or the class is certified.

3 77. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
4 to Plaintiffs and the Waiting Time Class during the actionable period for this cause of action at or
5 around the time that their employment is or was terminated or ended.

6 78. Labor Code § 203 provides that if an employer willfully fails to pay compensation
7 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
8 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

9 79. Defendants willfully failed to pay Plaintiffs and the Waiting Time Subclass for all
10 hours worked, including all minimum and overtime wages, and their meal and rest period premiums,
11 prior to or upon termination or separation from employment with Defendants as required by Labor
12 Code §§ 201 and 202.

13 80. As a result, Defendants are liable to Plaintiffs and the Waiting Time Subclass for
14 waiting time penalties amounting to thirty (30) days wages for Plaintiffs and the Waiting Time
15 Subclass pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of
16 wages due upon termination entitles an employee to recover waiting time penalties).

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT**

19 **(AGAINST ALL DEFENDANTS)**

20 81. Labor Code section 204 requires that all wages are due and payable twice in each
21 calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, 1197 and other sections
22 became due and payable to Plaintiff and Class Members in each month that he or she was not paid
23 all lawful wages owed or provided with lawful meal period or rest period to which he or she was
24 entitled. Defendants violated Lab. Code §204 by failing to pay said wages when they were due and
25 payable.

26 82. Labor Code section 210 (a) provides that “In addition to, and entirely independent and
27 apart from, any other penalty provided in this article, every person who fails to pay the wages of each
28 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,

1 shall be subject to a penalty as follows:

2 a. For any initial violation, one hundred dollars (\$100) for each failure to pay each
3 employee; and

4 b. For each subsequent violation, or any willful or intentional violation, two hundred
5 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
6 withheld.

7 83. As a result of the unlawful acts of Defendants alleged herein, Plaintiffs and the
8 members of the Classes they seek to represent have been deprived of wages in amounts to be
9 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties.

10 84. Wherefore, Plaintiffs and the Classes they seek to represent request relief as described
11 herein and below.

12 **NINTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

14 **(AGAINST ALL DEFENDANTS)**

15 85. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

16 86. Defendants have engaged and continue to engage in unfair and/or unlawful business
17 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
18 failing to pay all minimum and overtime wages at the legal rate, by failing to provide all legally
19 required meal and rest periods or pay premium payments in lieu thereof, by failing to provide accurate
20 wage statements, failing to properly reimburse for necessary business expenses, and by failing to pay
21 all earned wages at the time of separation from employment.

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

27 88. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged
28 herein, Plaintiffs for themselves and on behalf of the members of the Classes, seek 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.

89. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

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

TENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

91. Plaintiffs incorporates the preceding paragraphs of the Class and Representative Action Complaint as if fully alleged herein.

92. Defendants have committed various Labor Code violations against Plaintiffs and other similarly non-exempt employees as set forth above.

93. Plaintiffs are "aggrieved employees" within the meaning of Labor Code § 2698 et seq., acting on behalf of themselves and other non-exempt employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiffs, other non-exempt employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a. Failing to pay Plaintiffs and other non-exempt employees for all hours worked, including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197, 1198, and 1182.12;

b. Failing to pay Plaintiffs and other non-exempt employees overtime wages at the "regular rate of pay", including all forms of non-hourly compensation, in violation of Labor Code §§

1 204, 510, 558, 1194, and 1198;

2 c. Failing to authorize and permit Plaintiffs and other non-exempt employees with all of
3 their statutorily mandated meal and rest periods or compensation at the “regular rate of pay” in lieu
4 thereof in violation of Labor Code §§ 226.7, and 516;

5 d. Failing to reimburse Plaintiffs and other non-exempt employees for all necessary
6 business expenses in violation of Labor Code § 2208;

7 e. Failing to furnish Plaintiffs and other non-exempt employees with complete, accurate,
8 itemized wage statements in violations of Labor Code § 226(a)(1), (5), and (9); and

9 f. Failing to timely compensate Plaintiffs and non-exempt employees with all earnings
10 during and at their separation of employment in violation of Labor Code §§ 201-204.

11 94. Plaintiffs have notified Defendant VITAS Healthcare Corporation of California
12 (“Defendant”) via certified mail, and the California Labor and Workforce Development Agency
13 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et seq.*,
14 with respect to violations of the California Labor Code identified in Paragraph 89 (a)-(f).

15 95. Now that sixty-five days have passed from Plaintiffs notifying Defendant of these
16 violations, Plaintiffs will have exhausted their administrative requirements for bringing a claim under
17 the Private Attorneys General Act with respect to these violations.

18 96. Plaintiffs were compelled to retain the services of counsel to file this court action to
19 protect their interests and the interests of other non-exempt employees, and to assess and collect the
20 civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys’ fees and costs, which
21 they are entitled to receive under California Labor Code § 2699 *et seq.*

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiffs pray for judgment for themselves and for all others on whose
24 behalf this suit is brought against Defendants, as follows:

- 25 1. For an order certifying the proposed Classes;
- 26 2. For an order appointing Plaintiffs as representatives of the Classes;
- 27 3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
- 28 4. Upon the First Cause of Action, for compensatory, consequential, general and special

1 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;

2 5. Upon the Second Cause of Action, for compensatory, consequential, general and
3 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;

4 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
5 damages according to proof pursuant to Labor Code §§ 226.7 and 516;

6 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

8 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
9 reasonable costs and attorneys' fees;

10 9. Upon the Sixth Cause of Action, reimbursement of costs and statutory penalties
11 pursuant to Labor Code §§ 2802-2804, and reasonable costs and attorneys' fees;

12 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
13 Labor Code §§ 201-203.

14 11. Upon the Eighth Cause of Action, for statutory penalties pursuant to Labor Code §§
15 204, 210.

16 12. Upon the Ninth Cause of Action, for restitution to Plaintiffs and members of the
17 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
18 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

19 13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiffs, other non-exempt
20 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f),
21 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
22 violation per employee per pay period for those violations of the Labor Code for which no civil
23 penalty is specifically provided;

24 14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
25 § 218.6 and Civil Code §§ 3287 and 3289;

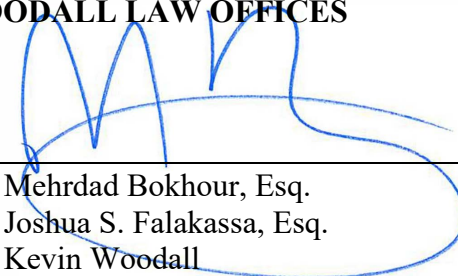
26 15. For attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, and Code of
27 Civil Procedure § 1021.5; and
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16. For such other relief that the Court may deem just and proper.

Dated: March 13, 2023

BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.
WOODALL LAW OFFICES

By: 

Mehrdad Bokhour, Esq.
Joshua S. Falakassa, Esq.
Kevin Woodall
Attorneys for Plaintiffs and the Putative Classes

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars,
Suite 450, Los Angeles, California 90067.

5 On March 28, 2023, I served the following document(s) described as
6 **SECOND AMENDED CLASS AND PAGA ACTION COMPLAINT** on the
interested parties in this action by placing true copies thereof enclosed in sealed envelopes
addressed as follows:

7 Reed E. Schaper, Esq.
8 schaper@hkemploymentlaw.com
Adam Maldonado, Esq.
9 amaldonado@hkemploymentlaw.com
HIRSCHFELD KRAEMER, LLP
10 233 Wilshire Boulevard, Suite 600
Santa Monica, California 90401

11 Monte Grix, Esq.
12 mgrix@hkemploymentlaw.com
HIRSCHFELD KRAEMER, LLP
13 456 Montgomery Street, Suite 2200
San Francisco, California 94104

14 **Counsel for defendant Vitas Healthcare**
15 **Corporation of California**

16 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
17 electronic service provider First Legal to the person(s) identified above at the email address(es)
18 indicated and did not, within a reasonable time after transmission, receive any message or
communication indicating that delivery failed or that any other error had occurred which would
delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct.

21 Executed on March 28, 2023, at Los Angeles, California.

22 

23

Carlos Garcia