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Electronically Filed  
2/1/2022 10:45 AM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Sonia Krohn, Deputy

Attorneys for Plaintiff Dianna Faith Moon, individually,  
and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF STANISLAUS**

DIANNA FAITH MOON, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

AVALON HEALTH CARE  
MANAGEMENT, INC.; AVALON  
SENIOR LIVING – FORTUNA, L.L.C.;  
AVALON SENIOR LIVING – CEDAR  
CREEK, L.L.C.; AVALON SENIOR  
LIVING – CLEARLAKE, L.L.C.;  
AVALON SENIOR LIVING – YREKA,  
L.L.C.; AVALON SENIOR LIVING  
SERVICES, LLC; EASTRIDGE PACIFIC  
SENIOR-LIVING, LLC; and DOES 1  
through 20, inclusive,

Defendants.

Case No. CV-21-003153

*Assigned for All Purposed to:*  
*Judge Hon. Sonny S. Sandhu*  
*Dept: 24*

**FIRST AMENDED COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Violation of Business and Professions Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”)

**DEMAND FOR JURY TRIAL**

1 Plaintiff Dianna Faith Moon, individually, and on behalf of others similarly situated,  
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Dianna Faith Moon (“Plaintiff”) brings this putative class action and  
5 representative action against defendants Avalon Health Care Management, Inc., Avalon Senior  
6 Living – Fortuna, L.L.C., Avalon Senior Living – Cedar Creek, L.L.C., Avalon Senior Living –  
7 Clearlake, L.L.C., Avalon Senior Living – Yreka, L.L.C., Avalon Senior Living Services, LLC,  
8 Eastridge Pacific Senior-Living, LLC, and DOES 1 through 20, inclusive (collectively,  
9 “Defendants”), on behalf of herself individually and a putative class and aggrieved group of  
10 California citizens who are and were employed by Defendants as non-exempt employees  
11 throughout California.

12 2. Defendants are in the business of operating assisted living facilities.

13 3. Through this action, Plaintiff alleges that Defendants have engaged in a  
14 systematic pattern of wage and hour violations under the California Labor Code and Industrial  
15 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate  
16 unfair competition.

17 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have  
18 increased their profits by violating state wage and hour laws by, among other things:

- 19 (a) failing to pay all wages (including minimum wages and overtime  
20 wages);  
21 (b) failing to provide lawful meal periods or compensation in lieu thereof;  
22 (c) failing to authorize or permit lawful rest breaks or provide compensation  
23 in lieu thereof;  
24 (d) failing to provide accurate itemized wage statements;  
25 (e) failing to pay all wages due upon separation of employment.

26 5. Plaintiff seeks monetary relief against Defendants on behalf of herself, the State,  
27 and all others similarly situated in California to recover, among other things, unpaid wages and  
28 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§

201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2698  
*et seq.*, and Code of California Civil Procedure § 1021.5.

### **JURISDICTION AND VENUE**

6. This is a class action pursuant to California Code of Civil Procedure § 382 and a representative action pursuant to Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*) (“PAGA”). The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

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

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

### **THE PARTIES**

10. Plaintiff is a citizen of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

1           12. Plaintiff is unaware of the true names or capacities of the defendants sued herein  
2 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this  
3 Complaint and serve such fictitiously named defendants once their names and capacities  
4 become known.

5           13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20  
6 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants  
7 at all relevant times.

8           14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted  
9 in all respects pertinent to this action as the agent of the other defendant, carried out a joint  
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant  
11 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as  
12 the employer and/or joint employer of Plaintiff and the class members.

13           15. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
14 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or  
15 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on  
16 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,  
17 the official policy of Defendants.

18           16. At all relevant times, Defendants, and each of them, acted within the scope of  
19 such agency or employment, or ratified each and every act or omission complained of herein.  
20 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of  
21 each and all the other Defendants in proximately causing the damages herein alleged.

22           17. Plaintiff is informed and believes, and thereon alleges, that each of said  
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
24 omissions, occurrences, and transactions alleged herein.

25                                   **CLASS ACTION ALLEGATIONS**

26           18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of  
27 herself and all others similarly situated who were affected by Defendants' Labor Code,  
28 Business and Professions Code §§ 17200, and IWC Wage Order violations.

1           19. All claims alleged herein arise under California law for which Plaintiff seeks  
2 relief authorized by California law.

3           20. Plaintiff's proposed class consists of and is defined as follows:

4           Class

5           All California citizens currently or formerly employed by Defendants as non-  
6 exempt employees in the State of California at any time between December 12,  
7 2016<sup>1</sup> and the date of class certification ("Class").

8           21. Plaintiff also seeks to certify the following subclass of employees:

9           Waiting Time Subclass

10          All Class Members who separated their employment with Defendants at any time  
11 between December 12, 2017 and the date of class certification ("Subclass" or  
12 "Waiting Time Subclass").

13          22. Plaintiff reserves the right to modify or re-define the Class, establish additional  
14 subclasses, or modify or re-define any class or subclass definition as appropriate based on  
15 investigation, discovery, and specific theories of liability.

16          23. Members of the Class and the Subclass described above will be collectively  
17 referred to as "Class Members."

18          24. There are common questions of law and fact as to the Class Members that  
19 predominate over any questions affecting only individual members including, but not limited to,  
20 the following:

21               (a) Whether Defendants failed to pay Plaintiff and Class Members all wages  
22               (including minimum wages and overtime wages) for all hours worked by  
23               Plaintiff and Class Members.

24               (b) Whether Defendants required Plaintiff and Class Members to work over  
25               eight (8) hours per day, over twelve (12) hours per day, over forty (40)  
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27          <sup>1</sup> The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020,  
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

hours per week, and/or seven (7) consecutive days and failed to pay them overtime compensation at the proper rate.

(c) Whether Defendants deprived Plaintiff and Class Members of timely meal periods or required Plaintiff and Class Members to work through meal periods without proper compensation.

(d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or required Plaintiff and Class Members to work through rest breaks without proper compensation.

(e) Whether Defendants failed to provide Plaintiff and Class Members accurate itemized wage statements.

(f) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation.

(g) Whether Defendants' conduct was willful or reckless.

(h) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and Subclass are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this time, on information and belief, the class is estimated to be greater than twenty-five (25) individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class Members because Defendants' failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries

1 sustained by the Class Members because they arise out of and are caused by Defendants'  
2 common course of conduct as alleged herein.

3 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the  
4 interests of all Class Members because it is in her best interest to prosecute the claims alleged  
5 herein to obtain full compensation and penalties due to her and the Class Members. Plaintiff's  
6 attorneys, as proposed class counsel, are competent and experienced in litigating large  
7 employment class actions and versed in the rules governing class action discovery,  
8 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,  
9 will continue to incur attorneys' fees and costs that have been and will be necessarily expended  
10 for the prosecution of this action for the substantial benefit of the Class Members.

11 (d) Superiority: The nature of this action makes use of class action  
12 adjudication superior to other methods. A class action will achieve economies of time, effort,  
13 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because  
14 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the  
15 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently  
16 manage this case as a class action.

17 (e) Public Policy Considerations: Employers in the State of California  
18 violate employment and labor laws every day. Current employees are often afraid to assert their  
19 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing  
20 actions because they believe their former employers might damage their future endeavors  
21 through negative references and/or other means. Class actions provide class members who are  
22 not named in the complaint with a type of anonymity that allows for the vindication of their  
23 rights while affording them privacy protections.

#### 24 **GENERAL ALLEGATIONS**

25 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other  
26 California citizens as non-exempt employees at Defendants' California business location(s).

27 27. Defendant employed Plaintiff as a non-exempt employee at Defendants'  
28 California business location.

1           28.     Defendants continue to employ non-exempt employees within California.

2           29.     Plaintiff is informed and believes, and thereon alleges, that at all times herein  
3 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals  
4 who were knowledgeable about California's wage and hour laws, employment and personnel  
5 practices, and the requirements of California law.

6           30.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
7 should have known that Plaintiff, Class Members, and other aggrieved employees were entitled  
8 to receive wages for all time worked (including minimum wages and overtime wages) and that  
9 they were not receiving all wages earned for work that was required to be performed. In  
10 violation of the Labor Code and IWC Wage Orders, Plaintiff, Class Members, and other  
11 aggrieved employees were not paid all wages (including minimum wages and overtime wages)  
12 for all hours worked at the correct rate due to requirements to work off-the-clock, automatically  
13 deducted meal periods, and overtime calculations that omitted non-discretionary bonuses,  
14 among other issues.

15          31.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
16 should have known that Plaintiff and Class Members were entitled to receive all required meal  
17 periods or payment of one (1) additional hour of pay at Plaintiff's, Class Members', and other  
18 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted  
19 meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class  
20 Members did not receive all meal periods or payment of one (1) additional hour of pay at  
21 Plaintiff's, Class Members', , and other aggrieved employees' regular rate of pay when they did  
22 not receive a timely, uninterrupted meal period.

23          32.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff, Class Members, and other aggrieved employees were entitled  
25 to receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff's, Class  
26 Members', , and other aggrieved employees' regular rate of pay when a rest break was missed.  
27 In violation of the Labor Code and IWC Wage Orders, Plaintiff, Class Members, and other  
28

1 aggrieved employees did not receive all rest breaks or payment of one (1) additional hour of  
2 pay at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

3 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
4 should have known that Plaintiff, Class Members, and other aggrieved employees were entitled  
5 to receive itemized wage statements that accurately showed the following information pursuant  
6 to the Labor Code: (1) gross wages earned; (2) total hours worked by the employee; (3) the  
7 number of piece-rate units earned and any applicable piece rate if the employee is paid on a  
8 piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the  
9 employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive  
10 dates of the period for which the employee is paid; (7) the name of the employee and only the  
11 last four digits of his or her social security number or an employee identification number other  
12 than a social security number; (8) the name and address of the legal entity that is the employer;  
13 and (9) all applicable hourly rates in effect during the pay period and the corresponding number  
14 of hours worked at each hourly rate by the employee. In violation of the Labor Code, Plaintiff,  
15 Class Members, and other aggrieved employees were not provided with accurate itemized wage  
16 statements.

17 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
18 should have known that the Waiting Time Subclass and other aggrieved employees were  
19 entitled to timely payment of wages due upon separation of employment. In violation of the  
20 Labor Code, the Waiting Time Subclass and other aggrieved employees did not receive  
21 payment of all wages within permissible time periods.

22 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
23 should have known they had a duty to compensate Plaintiff, Class Members, and other  
24 aggrieved employees, and Defendants had the financial ability to pay such compensation but  
25 willfully, knowingly, and intentionally failed to do so in order to increase Defendants' profits.

26 36. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief  
27 against Defendants on behalf of herself, all Class Members, and other aggrieved employees to  
28 recover, among other things, unpaid wages (including minimum wages and overtime wages),

1 unpaid meal period premium payments, unpaid rest period premium payments, interest,  
2 attorneys' fees, penalties, costs, and expenses.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)

6 37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
7 though fully set forth herein.

8 38. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees  
9 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser  
10 wage than the minimum so fixed is unlawful.

11 39. During the relevant time period, Defendants paid Plaintiff and Class Members  
12 less than minimum wages when they failed to pay proper compensation for all hours worked.  
13 To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class  
14 Members were not being paid at least the lawful minimum wage for their work.

15 40. During the relevant time period, Defendants regularly failed to pay at least  
16 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code  
17 §§ 1194 and 1197.

18 41. Defendants' failure to pay Plaintiff and Class Members the required minimum  
19 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class  
20 Members are entitled to recover the unpaid balance of their minimum wage compensation as  
21 well as interest, costs, and attorneys' fees.

22 42. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to  
23 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued  
24 interest thereon.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME**

3 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)

4 43. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
5 though fully set forth herein.

6 44. Labor Code § 1198 and the applicable IWC Wage Order provide that it is  
7 unlawful to employ persons without compensating them at a rate of pay either one and one-half  
8 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or  
9 days worked by the person on a daily or weekly basis.

10 45. Specifically, the applicable IWC Wage Orders provide that Defendants are and  
11 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one  
12 and one-half times (1½) their regular rate of pay when working and for all hours worked in  
13 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first  
14 eight (8) hours of work on the seventh day of work in a workweek.

15 46. The applicable IWC Wage Orders further provide that Defendants are and were  
16 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times  
17 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours  
18 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

19 47. California Labor Code § 510 codifies the right to overtime compensation at one  
20 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in  
21 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh  
22 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours  
23 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the  
24 seventh day of work in a workweek.

25 48. Labor Code § 510 and the applicable IWC Wage Orders provide that  
26 employment of more than six days in a workweek is only permissible if the employer pays  
27 proper overtime compensation as set forth herein.  
28

1           49. Plaintiff and Class Members were non-exempt employees entitled to the  
2 protections of California Labor Code §§ 510 and 1194.

3           50. During the relevant time period, Defendants required Plaintiff and Class  
4 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a  
5 seventh consecutive day in a workweek without paying Plaintiff and Class Members overtime  
6 wages for their work.

7           51. During the relevant time period, Defendants failed to pay Plaintiff and Class  
8 Members overtime wages for all overtime hours worked when Plaintiff and Class Members  
9 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh  
10 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in  
11 excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of  
12 work in a work week.

13           52. In violation of state law, Defendants knowingly and willfully refused to perform  
14 their obligations and compensate Plaintiff and Class Members for all wages earned and all  
15 hours worked.

16           53. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of  
17 overtime and double time compensation, as required by California law, violates the provisions  
18 of Labor Code §§ 510 and 1198, and is therefore unlawful.

19           54. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to  
20 recover their unpaid overtime and double time compensation as well as interest, costs, and  
21 attorneys' fees.

### 22                                   **THIRD CAUSE OF ACTION**

#### 23                                   **FAILURE TO PROVIDE MEAL PERIODS**

24                                   (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)

25           55. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
26 though fully set forth herein

27           56. Labor Code § 226.7 provides that no employer shall require an employee to work  
28 during any meal period mandated by the IWC Wage Orders.

1           57.     Section 11 of the applicable IWC Wage Order states, “[n]o employer shall  
2     employ any person for a work period of more than five (5) hours without a meal period of not  
3     less than 30 minutes, except that when a work period of not more than six (6) hours will  
4     complete the day’s work the meal period may be waived by mutual consent of the employer and  
5     the employee.”

6           58.     Labor Code § 512(a) provides that an employer may not require, cause, or permit  
7     an employee to work for a period of more than five (5) hours per day without providing the  
8     employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if  
9     the total work period per day of the employee is not more than six (6) hours, the meal period  
10    may be waived by mutual consent of both the employer and the employee.

11          59.     Labor Code § 512(a) also provides that an employer may not employ an  
12    employee for a work period of more than ten (10) hours per day without providing the employee  
13    with a second meal period of not less than thirty (30) minutes, except that if the total hours  
14    worked is no more than twelve (12) hours, the second meal period may be waived by mutual  
15    consent of the employer and the employee only if the first meal period was not waived.

16          60.     During the relevant time period, Plaintiff and Class Members did not receive  
17    compliant meal periods for working more than five (5) and/or ten (10) hours per day because  
18    their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a  
19    second meal period.

20          61.     Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order  
21    requires an employer to pay an employee one (1) additional hour of pay at the employee’s  
22    regular rate of compensation for each work day that a compliant meal period is not provided.

23          62.     At all relevant times, Defendants failed to pay Plaintiff and Class Members meal  
24    period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code  
25    § 226.7(b) and section 11 of the applicable IWC Wage Order.

26          63.     As a result of Defendants’ failure to pay Plaintiff and Class Members an  
27    additional hour of pay for each day a compliant meal period was not provided, Plaintiff and  
28    Class Members suffered and continue to suffer a loss of wages and compensation.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)

4 64. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
5 though fully set forth herein.

6 65. Labor Code § 226.7(a) provides that no employer shall require an employee to  
7 work during any rest period mandated by the IWC Wage Orders.

8 66. Section 12 of the applicable IWC Wage Order states “[e]very employer shall  
9 authorize and permit all employees to take rest periods, which insofar as practicable shall be in  
10 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the  
11 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major  
12 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

13 67. During the relevant time period, Plaintiff and Class Members did not receive a  
14 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because  
15 they were required to work through their daily rest periods, were not permitted to take timely  
16 rest periods, and/or were not authorized to take their rest periods.

17 68. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order  
18 requires an employer to pay an employee one (1) additional hour of pay at the employee’s  
19 regular rate of compensation for each work day that a compliant rest period is not provided.

20 69. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest  
21 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §  
22 226.7(b) and section 12 of the applicable IWC Wage Order.

23 70. As a result of Defendants’ failure to pay Plaintiff and Class Members an  
24 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class  
25 Members suffered and continue to suffer a loss of wages and compensation.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 (Violation of Labor Code § 226; Violation of IWC Wage Order)

4 71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
5 though fully set forth herein.

6 72. Labor Code § 226(a) requires Defendants to provide each employee with an  
7 accurate wage statement in writing showing nine pieces of information, including, the  
8 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of  
9 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate  
10 basis, (4) all deductions, provided that all deductions made on written orders of the employee  
11 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the  
12 period for which the employee is paid, (7) the name of the employee and the last four digits of  
13 his or her social security number or an employee identification number other than a social  
14 security number, (8) the name and address of the legal entity that is the employer, and (9) all  
15 applicable hourly rates in effect during the pay period and the corresponding number of hours  
16 worked at each hourly rate by the employee.

17 73. During the relevant time period, Defendants have knowingly and intentionally  
18 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff  
19 and Class Members. Defendants provided Plaintiff and Class Members with wage statements  
20 that were missing or inaccurately stated one or more of the following items: (1) gross wages  
21 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and  
22 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,  
23 provided that all deductions made on written orders of the employee may be aggregated and  
24 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the  
25 employee is paid, (7) the name of the employee and the last four digits of his or her social  
26 security number or an employee identification number other than a social security number, (8)  
27 the name and address of the legal entity that is the employer, and/or (9) all applicable hourly  
28

1 rates in effect during the pay period and the corresponding number of hours worked at each  
2 hourly rate by the employee.

3 74. As a result of Defendants' knowing and intentional failure to comply with Labor  
4 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their  
5 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an  
6 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor  
7 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and  
8 their protected interest in receiving, accurate itemized wage statements under Labor Code  
9 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage  
10 statements, Defendants prevented Plaintiff and Class Members from determining if all hours  
11 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had  
12 to file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff  
13 to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and  
14 incur these costs had Defendants provided the accurate hours worked, wages earned, and rates  
15 of pay. This has also delayed Plaintiff's ability to demand and recover the underpayment of  
16 wages from Defendants.

17 75. Plaintiff and Class Members are entitled to recover from Defendants the greater  
18 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or  
19 fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred  
20 dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not  
21 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

22 76. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff  
23 and Class Members from knowing, understanding, and disputing the wages paid to them and  
24 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'  
25 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and  
26 Class Members have suffered an injury, in the exact amount of damages and/or penalties to be  
27 shown according to proof at trial.  
28

77. Class Members that are still employed by Defendants are also entitled to injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226. Accordingly, affected Class Members seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

## SIXTH CAUSE OF ACTION

## **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

(Violation of Labor Code §§ 201, 202, 203, 227.3; Violation of IWC Wage Order)

78. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

79. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

80. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, accrued vacation time, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

81. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

82. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

83. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

## SEVENTH CAUSE OF ACTION

**VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

(Violation of Business and Professions Code §§ 17200, *et seq.*)

84. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

85. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . . .”

86. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer injuries-in-fact.

87. Defendants' policies and practices violated state law in at least the following respects:

- (a) Failing to pay all wages earned (including minimum wage and overtime wages) to Plaintiff and Class Members in violation of Labor Code §§ 204, 510, 1182.12, 1194, 1194.2, 1197, and 1198.
- (b) Failing to provide compliant meal periods without paying Plaintiff and Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512.
- (c) Failing to authorize or permit compliant rest breaks without paying Plaintiff and Class Members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7.

1 (d) Failing to provide Plaintiff and Class Members with accurate itemized  
2 wage statements in violation of Labor Code § 226.

3 (e) Failing to timely pay all earned wages to the members of the Waiting  
4 Time Subclass upon separation of employment in violation of Labor  
5 Code §§ 201, 202, 203, 227.3.

6 88. As alleged herein, Defendants systematically engaged in unlawful conduct in  
7 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages  
8 (minimum and overtime wages), failing to provide meal periods and rest breaks or  
9 compensation in lieu thereof, failing to furnish accurate wage statements, and failing to pay all  
10 wages due and owing upon separation of employment in a timely manner, all in order to  
11 decrease their costs of doing business and increase their profits.

12 89. At all relevant times herein, Defendants held themselves out to Plaintiff and  
13 Class Members as being knowledgeable concerning the labor and employment laws of  
14 California.

15 90. At all times relevant herein, Defendants intentionally avoided paying Plaintiff  
16 and Class Members wages and monies, thereby creating for Defendants an artificially lower  
17 cost of doing business in order to undercut their competitors and establish and/or gain a greater  
18 foothold in the marketplace.

19 91. As a result of Defendants' intentional, willful, purposeful, and wrongful  
20 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,  
21 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown  
22 according to proof at trial.

23 92. By violating the foregoing statutes and regulations as herein alleged,  
24 Defendants' acts constitute unfair and unlawful business practices under California Business  
25 and Professions Code §§ 17200, *et seq.*

26 93. As a result of the unfair and unlawful business practices of Defendants, as  
27 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and  
28 restitution in an amount to be shown according to proof at trial.

94. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

## EIGHTH CAUSE OF ACTION

**ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. (“PAGA”)**

(Enforcement of PAGA)

95. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

96. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce and Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699. 3.

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

98. Defendants' conduct violates numerous Labor Code section including, but not limited to, the following:

(a) violation of Labor Code §§ 201, 202, 203, 204, 227.3, 510, 1182.12, 1194, 1197, and 1198 for failure to timely pay all earned wages (including overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

- 1 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to  
2 Plaintiff and other aggrieved employees and failure to pay premium wages for  
3 missed meal periods as herein alleged;
- 4 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and  
5 other aggrieved employees and failure to pay premium wages for missed rest  
6 periods as herein alleged;
- 7 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage  
8 statements to Plaintiff and other aggrieved employees as herein alleged; and
- 9 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and  
10 complete records showing, among other things, the hours worked daily and the  
11 wages paid to aggrieved employees as herein alleged;

12 99. Further, Labor Code § 558 provides, “Any employer or other person acting on  
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
14 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil  
15 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for  
16 each pay period for which the employee was underpaid in addition to an amount sufficient to  
17 recover unpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each  
18 underpaid employee for each pay period for which the employee was underpaid in addition to  
19 an amount sufficient to recover underpaid wages; (3) Wages recovered pursuant to this section  
20 shall be paid to the affected employee.” Labor Code § 558(c) provides “the civil penalties  
21 provided for in this section are in addition to any other civil or criminal penalty provided by  
22 law.”

23 100. As set forth above, Defendants have violated numerous provisions of the Labor  
24 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly,  
25 Plaintiff seeks the remedies set forth in Labor Code § 558 for himself, the underpaid  
26 employees, and the State of California.

27 101. Plaintiff is an “aggrieved employee” because she has employed by the alleged  
28 violator and had one or more of the alleged violations committed against her, and therefore is

properly suited to represent the interests of all other aggrieved employees.

102. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

103. Pursuant to Labor Code § 2699(a), 2699.2, and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

104. For bringing this action, Plaintiff is entitled to attorneys' fees and costs incurred herein.

### **PRAYER FOR RELIEF**

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;

2. For appointment of Dianna Faith Moon as the class representative;

3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful,

1 unfair, or fraudulent and, therefore, constituting unfair competition under Business and  
2 Professions Code §§ 17200, *et seq.*;

3 12. For pre-judgment interest;

4 13. For penalties pursuant to PAGA;

5 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted  
6 by law, including, but not limited to, PAGA, Code of Civil Procedure § 1021.5 and Labor Code  
7 §§ 226(e) and 1194; and

8 15. For such other relief as the Court deems just and proper.

9  
10 Dated: February 1, 2022

**AEGIS LAW FIRM, PC**

11  
12 By: 

Joseph M. Szilagyi

Attorneys for Plaintiff Dianna Faith Moon

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15  
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

18  
19 Dated: February 1, 2022

**AEGIS LAW FIRM, PC**

20  
21 By: 

Joseph M. Szilagyi

Attorneys for Plaintiff Dianna Faith Moon

**CERTIFICATE OF SERVICE**

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On February 1, 2022, I served the foregoing document entitled:

**• FIRST AMENDED COMPLAINT**

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

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AVALON SENIOR LIVING – CLEARLAKE,  
L.L.C.; AVALON SENIOR LIVING –  
YREKA, L.L.C.; AVALON SENIOR LIVING  
SERVICES, LLC

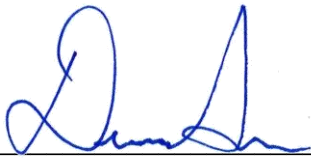
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LLC

- ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, 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 meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)
- ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)
- ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)
- ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

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

3 Executed on February 1, 2022, at Irvine, California.

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6 Delaney Graves  
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