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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

ANGELICA TRUJILLO, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

ACCENTCARE, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: MSC21-01927

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

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1 Plaintiff Angelica Trujillo (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants AccentCare, Inc. and Does 1 through
6 10 (collectively referred to as “Defendants”) for California Labor Code violations and unfair
7 business practices stemming from Defendants’ failure to pay minimum wages, failure to pay
8 overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
9 failure to maintain accurate records of hours worked and meal periods, failure to timely pay all
10 wages to terminated employees, failure to indemnify necessary business expenses, and failure to
11 furnish accurate wage statements.

12 2. For over 50 years, California’s courts and legislature have recognized that this State’s
13 wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages
14 are not ordinary debts. Because of the economic position of the average worker and his or her
15 family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
16 employees are promptly paid the minimum/overtime wages that the Legislature has required for
17 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
18 criminalized certain types of violations. In extending extra protection to deter violations of these
19 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
20 other damages other than civil penalties—California has enacted the PAGA to permit an
21 individual to bring an action for PAGA penalties only, which is the precise and sole nature of this
22 action.

23 3. All non-exempt California employees of Defendants beginning September 21, 2020 to
24 the present, are “Aggrieved Employees.”

25 4. Plaintiff brings this action against Defendants seeking only to recover penalties on
26 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
27 California. Plaintiff does not seek to recover anything other than penalties as permitted by
28 California Labor Code Section 2699 at this time. To the extent that statutory violations are

1 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
2 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
3 declaratory relief, and injunctive relief for themselves and all aggrieved employees as permitted
4 by the PAGA.

5 5. Defendants own/owned and operate/operated an industry, business, and
6 establishment within the State of California, including Contra Costa County. As such, and based
7 upon all the facts and circumstances incident to Defendants' business in California, Defendants
8 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
9 Commission ("IWC"), and the California Business & Professions Code.

10 6. Despite these requirements, throughout the statutory period Defendants maintained
11 a systematic, company-wide policy and practice of:

- 12 (a) Failing to pay employees for all hours worked, including all minimum
13 wages, and overtime wages in compliance with the California Labor Code
14 and IWC Wage Orders;
- 15 (b) Failing to provide employees with timely and duty-free meal periods in
16 compliance with the California Labor Code and IWC Wage Orders, failing
17 to maintain accurate records of all meal periods taken or missed, and
18 failing to pay an additional hour's pay for each workday a meal period
19 violation occurred;
- 20 (c) Failing to authorize and permit employees to take timely and duty-free rest
21 periods in compliance with the California Labor Code and IWC Wage
22 Orders, and failing to pay an additional hour's pay for each workday a rest
23 period violation occurred;
- 24 (d) Failing to indemnify employees for necessary business expenses incurred;
- 25 (e) Willfully failing to pay employees all minimum wages, overtime wages,
26 meal period premium wages, and rest period premium wages due within
27 the time period specified by California law when employment terminates;
28 and

- (f) Failing to maintain accurate records of the hours that employees worked.
- (g) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff is a California resident that worked for Defendants in the County of Contra Costa, State of California, as an office coordinator from approximately July 2019 to April 2021.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant AccentCare, Inc. is:

- (a) A Delaware corporation with its principal place of business in Contra Costa, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in Contra Costa County; and

1 (c) The former employer of Plaintiff, and the current and/or former employer
2 of the Aggrieved Employees. AccentCare, Inc. suffered and permitted
3 Plaintiff and Aggrieved Employees to work, and/or controlled their wages,
4 hours, or working conditions.

5 12. Plaintiff does not currently know the true names or capacities of the persons or
6 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious
7 names. Each of the Doe Defendants was in some manner legally responsible for the damages
8 suffered by Plaintiff and Aggrieved Employees as alleged herein. Plaintiff will amend this
9 complaint to set forth the true names and capacities of these Defendants when they have been
10 ascertained, together with appropriate charging allegations, as may be necessary.

11 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
12 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
13 and/or injured a significant number of the Plaintiff and Aggrieved Employees in the State of
14 California.

15 14. Plaintiff is informed and believes and thereon alleges that at all relevant times each
16 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
17 Aggrieved Employees, and exercised control over their wages, hours, and working conditions.
18 Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant
19 was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
20 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
21 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
22 a joint enterprise for profit, and bore such other relationships to some or all of the other
23 Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff
24 is informed and believes and thereon alleges that each Defendant acted pursuant to and within the
25 scope of the relationships alleged above, that each Defendant knew or should have known about,
26 and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other
27 Defendants.

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1 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 15. Plaintiff is a California resident who worked for Defendants in the County of
3 Contra Costa, State of California, as an office coordinator, from approximately July 2019 to
4 April 2021. During the statutory period, Defendants classified Plaintiff as non-exempt from
5 California’s overtime requirements, and paid Plaintiff an hourly wage.

6 16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
7 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
8 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
9 periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all
10 final wages to Plaintiff when Defendants terminated Plaintiff’s employment, and failed to furnish
11 accurate wage statements to Plaintiff. As discussed below, Plaintiff’s experience working for
12 Defendants was typical and illustrative.

13 17. Throughout the statutory period, Defendants maintained a policy and practice of
14 not paying Plaintiff and Aggrieved Employees for all hours worked, including all overtime
15 wages. Throughout the statutory period, Plaintiff and Aggrieved Employees were required to
16 work “off-the-clock”, uncompensated. For example, Plaintiff and Aggrieved Employees were
17 required to use their personal cellular telephones for work-related matters while off the clock,
18 which included daily individual and group messaging with management and staff. Further,
19 Plaintiff and Aggrieved Employees were required to perform work after clocking out on
20 occasion, which included to assist orientation for newly hired nurses and employees, without
21 compensation. Also throughout the statutory period, Plaintiff and Aggrieved Employees received
22 non-discretionary bonuses (such as referral fees for new employees) and other remuneration.
23 However, Defendants failed to incorporate all remuneration when calculating the correct
24 overtime rate of pay, and correct meal/rest period premium pay, leading to underpayment to
25 Plaintiff and Aggrieved Employees. In maintaining a practice of not paying all wages owed,
26 Defendants failed to maintain accurate records of the hours Plaintiff and Aggrieved Employees
27 worked.

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1 18. Throughout the statutory period, Defendants have wrongfully failed to provide
2 Plaintiff and Aggrieved Employees with legally compliant meal periods. Defendants sometimes,
3 but not always, required Plaintiff and Aggrieved Employees to work in excess of five
4 consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-free
5 meal period for every five hours of work, or without compensating Plaintiff and Aggrieved
6 Employees for meal periods that were not provided by the end of the fifth hour of work or tenth
7 hour of work. Defendants also did not adequately inform Plaintiff and Aggrieved Employees of
8 their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10
9 hours, by the end of the tenth hour of work. Further, when the company held work meetings,
10 Plaintiff and Aggrieved Employees did not take uninterrupted meal periods. Accordingly,
11 Defendants' policy and practice was to not provide meal periods to Plaintiff and Aggrieved
12 Employees in compliance with California law.

13 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
14 and permit Plaintiff and Aggrieved Employees to take timely and duty-free rest periods.
15 Defendants sometimes, but not always, required Plaintiff and Aggrieved Employees to work in
16 excess of four consecutive hours a day without Defendants authorizing and permitting them to
17 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
18 major fraction of four hours), or without compensating Plaintiff and Aggrieved Employees for
19 rest periods that were not authorized or permitted. Defendants also did not adequately inform
20 Plaintiff and Aggrieved Employees of their right to take a rest period. Moreover, Defendants did
21 not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
22 Aggrieved Employees nor did Defendants have adequate policies or practices regarding the
23 timing of rest periods. Defendants also did not have adequate policies or practices to verify
24 whether Plaintiff and Aggrieved Employees were taking their required rest periods. Further,
25 Defendants did not maintain accurate records of employee work periods, and therefore
26 Defendants cannot demonstrate that Plaintiff and Aggrieved Employees took rest periods during
27 the middle of each work period. Plaintiff and Aggrieved Employees were also prohibited from
28 leaving the premises during rest breaks. Accordingly, Defendants' policy and practice was to not

1 authorize and permit Plaintiff and Aggrieved Employees take rest periods in compliance with
2 California law.

3 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and
4 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
5 Defendants without reimbursement. For example, Plaintiff and Aggrieved Employees were
6 required to use their personal cellular telephones for work, and required to use their personal
7 vehicles for work on occasions (such as errands for supervisors), without reimbursement.
8 Further, on those occasions when working at home remotely, Plaintiff and Aggrieved Employees
9 were not reimbursed for home internet or computer usage.

10 21. Throughout the statutory period, Defendants willfully failed and refused to timely
11 pay Plaintiff and Aggrieved Employees at the conclusion of their employment all wages for all
12 minimum wages, overtime wages, meal period premium wages, and rest period premium wages.

13 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and
14 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
15 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
16 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
17 provided in accordance with California law, correct wages for rest periods that were not
18 authorized and permitted to take in accordance with California law, and Defendant's address).
19 Further, the wage statements do not show Defendant's address as required by California law.
20 Finally, the wage statements do not show hourly rates for meal break premiums. As a result of
21 these violations of California Labor Code § 226(a), the Plaintiff and Aggrieved Employees
22 suffered injury because, among other things:

- 23 (a) the violations led them to believe that they were not entitled to be paid
24 minimum wages, overtime wages, meal period premium wages, and rest
25 period premium wages to which they were entitled, even though they were
26 entitled;

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- 1 (b) the violations led them to believe that they had been paid the minimum,
2 overtime, meal period premium, and rest period premium wages, even
3 though they had not been;
- 4 (c) the violations led them to believe they were not entitled to be paid
5 minimum, overtime, meal period premium, and rest period premium wages
6 at the correct California rate even though they were;
- 7 (d) the violations led them to believe they had been paid minimum, overtime,
8 meal period premium, and rest period premium wages at the correct
9 California rate even though they had not been;
- 10 (e) the violations hindered them from determining the amounts of minimum,
11 overtime, meal period premium, and rest period premium owed to them;
- 12 (f) in connection with their employment before and during this action, and in
13 connection with prosecuting this action, the violations caused them to have
14 to perform mathematical computations to determine the amounts of wages
15 owed to them, computations they would not have to make if the wage
16 statements contained the required accurate information;
- 17 (g) by understating the wages truly due them, the violations caused them to
18 lose entitlement and/or accrual of the full amount of Social Security,
19 disability, unemployment, and other governmental benefits;
- 20 (h) the wage statements inaccurately understated the wages, hours, and wages
21 rates to which Plaintiff and Aggrieved Employees were entitled, and
22 Plaintiff and Aggrieved Employees were paid less than the wages and wage
23 rates to which they were entitled.

24 Thus, Plaintiff and Aggrieved Employees are owed the amounts provided for in California Labor
25 Code § 226(e), including actual damages.

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1 **FIRST CAUSE OF ACTION**

2 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
3 **2004, Cal. Lab. Code § 2698 et seq.)**

4 23. Plaintiff incorporates by reference and re-alleges as if fully stated herein
5 paragraphs 1 through 22 in this First Amended Complaint.

6 24. At all times herein mentioned, Defendants were subject to the Labor Code of the
7 State of California and the applicable Industrial Welfare Commission Orders.

8 25. California Labor Code § 2699(a) specifically provides for a private right of action
9 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
10 law, any provision of this code that provides for a civil penalty to be assessed and collected by
11 the Labor and Workforce Development Agency or any of its departments, divisions,
12 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
13 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
14 herself and other current or former employees pursuant to the procedures specified in Section
15 2699.3.”

16 26. Plaintiff has exhausted her administrative remedies pursuant to California Labor
17 Code § 2699.3. On September 18, 2021, Plaintiff gave written notice by online filing to the
18 Labor and Workforce Development Agency and by certified mail to Defendants of the specific
19 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
20 former Aggrieved Employees, including the facts and theories to support the violations. At the
21 time of this filing, 65 days has elapsed since Plaintiff provided notice, but the Labor and
22 Workforce Development Agency has not indicated that it intends to investigate Defendants’
23 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
24 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
25 the Labor Code described in this First Amended Complaint. These penalties include, but are not
26 limited to, penalties under California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

27 27. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
28

1 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
2 employing labor who willfully fails to maintain accurate and complete records required by
3 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
4 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
5 begins and ends each work period. Meal periods, and total hours worked daily shall also be
6 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
7 keep total hours worked in the payroll period and applicable rates of pay.

8 28. During the time period of employment for Plaintiff and the Aggrieved Employees,
9 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
10 maintain accurate records showing meal periods, and accurate records showing when employees
11 begin and end each work period. Defendants' failure to provide and maintain records required by
12 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
13 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
14 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
15 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
16 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
17 Employees have suffered and continue to suffer, substantial losses related to the use and
18 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
19 to compel Defendants to fully perform its obligation under state law, all to their respective
20 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
21 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
22 Employees have also suffered an injury in that they were prevented from knowing,
23 understanding, and disputing the wage payments paid to them.

24 29. Based on the conduct described in this First Amended Complaint, Plaintiff is
25 entitled to an award of civil penalties on behalf of herself, the State of California, and similarly
26 Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in
27 an amount to be shown according to proof at trial.

28 30. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs

pursuant to California Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”

PRAYER FOR RELIEF

Plaintiff, on behalf of herself, the State of California, and similarly Aggrieved Employees of Defendants, prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

31. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, regular rate, and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal periods, failing to pay final wages at termination, and failing to furnish accurate wage statements;

32. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all other applicable Labor Code provisions;

33. For reasonable attorneys’ fees and costs of suit incurred herein pursuant to California Labor Code § 2699;

34. For such other and further relief as the Court may deem equitable and appropriate.

Dated: January 17, 2022

Respectfully submitted,

MOON & YANG, APC

By: 

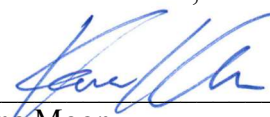
Kane Moon
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Attorneys for Plaintiff

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury as to all causes of action triable by jury.

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4 Dated: January 17, 2022

MOON & YANG, APC

5 By: 

6 Kane Moon
7 Lilit Ter-Astvatsatryan
8 Attorneys for Plaintiff
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STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT

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