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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/08/2020 at 03:18:00 PM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

ATTORNEY FOR PLAINTIFFS, SHAMIKA CLARK; EVA GRAVES; AMANDA JACKSON;
TIANA KAYLE; ROBERTO PALOMARES; LINDA PRUITT; BEATRICE RODGER; LYNN
THORN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SHAMIKA CLARK; EVA GRAVES;	)	CASE NO. 37-2019-00022350-CU-OE-CTL
AMANDA JACKSON; TIANA KAYLE;	)	
ROBERTO PALOMARES; LINDA PRUITT;	)	SECOND AMENDED COMPLAINT
BEATRICE RODGER; LYNN THORN	)	PUTATIVE CLASS ACTION COMPLAINT
	)	AND DEMAND FOR JURY TRIAL ON ALL
	)	CAUSES OF ACTION OTHER THAN FIVE
Plaintiffs,	)	FOR WHICH THE RELIEF IS EQUITABLE &
	)	SIX WHICH REQUIRES COURT RELIEF
vs.	)	
	)	1. REST BREAK VIOLATIONS
THE ARC OF SAN DIEGO; DOES 1-100	)	
	)	2. MEAL BREAK VIOLATIONS
Defendants	)	
	)	3. CALIFORNIA LABOR CODE § 226
	)	VIOLATIONS
	)	
	)	4. CALIFORNIA LABOR CODE SECTION
	)	2802
	)	
	)	5. CALIFORNIA BUSINESS &
	)	PROFESSIONS CODE SECTION 17200
	)	VIOLATIONS
	)	
	)	6. PRIVATE ATTORNEY GENERAL
	)	(PAGA) PENALTIES LABOR CODE
	)	SECTION 2699

PLAINTIFFS complain and allege as follows:

GENERAL ALLEGATIONS

(Against All Named Defendants)

1 1. Plaintiff, SHAMIKA CLARK, has at all times relevant for this lawsuit been a resident
2 of the State of California residing in the County of San Diego, and employed by Defendant since
3 on or about May 10, 2016.

4 2. Plaintiff, EVA GRAVES, has at all times relevant for this lawsuit been a resident of the
5 State of California residing in the County of San Diego starting work at Defendant on or about
6 September of 2016.

7 3. Plaintiff, AMANDA JACKSON, has at all times relevant for this lawsuit been a resident
8 of the State of California residing in the County of San Diego, and was employed by Defendant
9 since on or about January 20, 2016 to November 9, 2018.

10 4. Plaintiff, TIANA KRIE, has at all times relevant for this lawsuit been a resident of the
11 State of California residing in the County of San Diego, and employed by Defendant since on or
12 about February 22, 2016.

13 5. Plaintiff, ROBERTO PALOMARES, has at all times relevant for this lawsuit been a
14 resident of the State of California residing in the County of San Diego, and been employed by
15 Defendant since on or about June 20, 2016.

16 6. Plaintiff, LINDA PRUITT, has at all times relevant for this lawsuit been a resident of the
17 State of California residing in the County of San Diego starting work at Defendant on or about
18 December 22, 2014.

19 7. Plaintiff, BEATRICE RODGERS, has at all times relevant for this lawsuit been a resident
20 of the State of California residing in the County of San Diego, and been employed by Defendant
21 since on or about August of 2013.

22 8. Plaintiff, LYNNA THORN, has at all times relevant for this lawsuit been a resident of
23 the State of California residing in the County of San Diego, and been employed by Defendant since
24 on or about January 11, 2014.

25 9. At all times herein mentioned, Defendant, THE ARC OF SAN DIEGO has been a
26 California corporation maintaining a corporate office at, and employing Plaintiffs at 9575 Aero
27 Drive in San Diego, California 92123 as described in Paragraphs 1-8.

28 10. During all statutory periods Plaintiffs have worked as nonexempt persons who have

1 earned close to minimum wage from Defendant. For example, now that minimum wage is \$12.00
2 an hour in San Diego County the Plaintiffs are paid \$12.25 an hour. When minimum wage was
3 \$11.50 an hour January 1, 2017 to January 1, 2019 Plaintiffs earned \$11.50 an hour. In early 2016
4 when minimum wage was \$10.00 an hour those Plaintiffs employed by Defendant then were paid
5 \$10.10 an hour.

6 11. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate,
7 or associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive and so the
8 Plaintiff sues them by these fictitious names. Upon discovering the true names and capacities of
9 these fictitiously named Defendants, the Plaintiffs will amend this complaint to show the true names
10 and capacities of these fictitiously named defendants.

11 12. Class Definition - "All Arc of San Diego nonexempt DSP workers, including those in
12 the Senior Program, and in the community based program going back three years from the date this
13 lawsuit was filed for the California Labor Code Section 226.7 violations for failure to permit meal
14 or rest breaks and/or pay for missed rest and meal breaks, three years from the date this lawsuit was
15 filed for the California Labor Code Section 2802 cause of action for failure to reimburse for cellular
16 phone bills, and four years back for the California Business and Professions Code Section 17200
17 cause of action for failure to provide meal and rest breaks and to reimburse for cellular phones."

18 13. Numerosity exists because hundreds of employees in the proposed class Plaintiff,
19 BEATRICE RODGERS seeks to represent were subjected to the same California Labor Code
20 Section 226.7 and 2802 violations as Plaintiffs and the proposed class representative. Plaintiff,
21 BEATRICE RODGER alleges her class claims are typical of the class. Plaintiffs are aware persons
22 with the same job titles as them also worked at Defendant's San Marcos, El Cajon, Chula Vista, and
23 Market Place locations all within the County of San Diego, and experienced the same violations
24 pled by the Plaintiffs in this lawsuit.

25 14. Common questions of law and fact predominate the inquiry into whether the putative
26 class were victims of California Labor Code Section 226.7 violations for the reasons pled in the first
27 two causes of Action, whether California Labor Code Section 226 penalties are therefore
28 appropriate, whether Plaintiffs and the proposed class should receive reimbursements for their

1 cellular phones under California Labor Code Section 2802, and whether California Business and
2 Professions Code Section 17200 relief is appropriate on the classwide issues. Numerous lawsuits
3 on this issue could lead to inconsistent factual and legal findings. The filing of this lawsuit may
4 even deter numerous lawsuits premised on the violations pled here. Superiority of classwide
5 treatment also exists because there are persons in the class who were only employed for a short
6 period of time so their damages would be too small to bring a case on their own especially if an
7 expert was needed for computations and analysis. Moreover, none of the individual damages of the
8 class members reaches Superior Court jurisdiction making it difficult and impractical to find a
9 lawyer to represent those employees. California Labor Code Section 226 issues without additional
10 claims should be brought on a classwide basis because the individual damages for Section 226 are
11 a maximum of \$4,000. In addition, injunctive relief to stop the practice for a class is beneficial to
12 the victims of the Labor Code violations.

13 15. The Plaintiffs and the proposed class are or were all Direct Support Professionals (DSPs)
14 in Defendant's community based program. Their job was to take dependent adults, who appeared
15 at Defendant's adult day centers, out into the community. Due to Defendant's imposed 3:1 staffing
16 ratio the Plaintiffs were not able to take rest breaks or meal breaks during their seven hour shifts.
17 Until on or about February of 2019 Defendant's management instructed the Plaintiffs it was too
18 distracting to have Plaintiffs go out into the community as groups. However, now that Plaintiffs can
19 go out in the community as groups they are still prevented from taking meal and rest breaks because
20 if one of the DSPs were to take an uninterrupted rest break of 10 minutes or an uninterrupted meal
21 break of 30 minutes the required staffing ratio for dependent adults would not be met. Defendant
22 has created these issues through under staffing and failing to employ somebody capable of standing
23 in for Plaintiffs and the class when they go on meal or rest breaks.

24 16. Unless otherwise alleged in this complaint, the Plaintiffs are informed, and on the basis
25 of that information and belief allege that at all times herein mentioned, each of the remaining
26 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
27 under the authority of their agency, employment, or representative capacity, with the consent of
28 her/his codefendants.

1 FIRST CAUSE OF ACTION
2 FOR MEAL BREAK VIOLATIONS
3 (AGAINST DEFENDANT AND ALL DOE DEFENDANTS)
4

5 17. Plaintiffs reallege the information set forth in Paragraphs 1-16 and incorporate those
6 paragraphs as though fully stated in this cause of action and pled for relief going back three years
7 from the date this lawsuit is filed.

8 18. California Labor Code Section 512 specifies when employees are to get meal breaks.
9 California Labor Code Section 226.7 sets forth the penalty scheme which the Murphy Court has
10 interpreted to be a wage. California Labor Code Section 516 further allows the Industrial Welfare
11 Commission to make orders about breaks and meal periods.

12 19. Under California Labor Code Section 226.7, Plaintiffs pray for one hour of pay for each
13 uninterrupted 30 minute meal break they were prevented from taking and/or not permitted before
14 the end of their fifth hour of employment.

15 20. Under California Labor Code Section 226.7 Plaintiffs pray to be paid one hour of regular
16 pay for each meal break they were prevented from taking.

17 21. Plaintiffs further pray for a ruling any meal break waivers they were required to sign
18 failed to comply with Wage Order 5 and are invalid.

19
20 SECOND CAUSE OF ACTION
21 FOR REST BREAK VIOLATIONS
22 (AGAINST DEFENDANT AND ALL DOE DEFENDANTS)
23

24 22. Plaintiffs reallege the information set forth in Paragraphs 1-16, Paragraphs 17-21 of the
25 First Cause of Action, and incorporates those paragraphs as though fully stated in this cause of
26 action and pled for relief going back three years from the date this lawsuit is filed.

27 23. California Labor Code Section 516 allows the Industrial Welfare Commission to make
28 orders about rest breaks and meal periods. Title 8 of the California Code of Regulations Section

1 11050(12) requires rest breaks be given every 3.5 hours for 10 minutes. Plaintiffs allege they were
2 not allowed to take any 10 minute uninterrupted rest breaks during their shifts.

3 24. Under California Labor Code Section 226.7, Plaintiffs pray for one hour of pay for each
4 uninterrupted 10 minute rest break they were prevented from taking.

5
6 THIRD CAUSE OF ACTION
7 FOR CALIFORNIA LABOR CODE SECTION 226 PENALTIES
8 (AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)
9

10 25. Plaintiffs reallege the information set forth in Paragraphs 1-16, Paragraphs 17-21 of the
11 First Cause of Action, Paragraphs 22-24 of the Second Cause of Action, and incorporate those
12 paragraphs as though fully stated in this cause of action while pleading for relief going back three
13 years from the date this lawsuit is filed.

14 26. Defendant violated California Labor Code Section 226.7 because for all Plaintiffs
15 paychecks were wrong on each paystub because the checks did not show missed meal break or rest
16 break penalties. Accordingly, Sections 226(1) and (5) were violated for all Plaintiffs because gross
17 and net wages were not properly reflected. Missed meal and rest break penalties under Section
18 226.7 were not paid, nor reflected on the checks.

19 27. Plaintiffs pray for statutory California Labor Code Section 226(e) damages of \$50.00
20 for the first violation and \$100.00 for each subsequent violation.

21 28. Plaintiffs pray for injunctive relief under California Labor Code Section 226(h) as well
22 as attorney fees and costs in doing so.

23 29. Plaintiffs prays for attorney fees and costs under California Labor Code Section 218.5
24 and interest under 218.6.

25 ///

FOURTH CAUSE OF ACTION
FOR CALIFORNIA LABOR CODE SECTION 2802 VIOLATIONS
(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)

30. Plaintiffs reallege the information set forth in Paragraphs 1-16 and incorporate those paragraphs as though fully stated in this cause of action.

31. Defendant required Plaintiffs to own cellular phones, and use them throughout their shifts. Defendant regularly communicated with Plaintiffs on their cellular phones, including when Plaintiffs were out in the community with the dependent adults. Without Plaintiffs' cellular phones Defendant's supervisors and managers had no means of supervising and managing them. In addition, due to the population Plaintiffs were assisting it was critical that they had a means of communicating in the event of an emergency or due to any questions about the dependent adults' needs. Plaintiffs contend the use of their cellular phones was required by Defendant and reasonably necessary.

32. Plaintiffs pray for reimbursement for cellular phone bills during the period of time they were employed by Defendant within the statutory period of this California Labor Code Section 2802 cause of action which they contend is three years from the date this lawsuit was filed.

33. Plaintiff pray for attorney fees and costs under California Labor Code Section 2802c for the purpose of enforcing their rights in this cause of action under California Labor Code Section 2802.

FIFTH CAUSE OF ACTION
FOR BUSINESS & PROFESSIONS CODE VIOLATIONS
(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)

34. Plaintiffs reallege the information set forth in Paragraphs 1-16, Paragraphs 17-21 of the First Cause of Action, Paragraphs 22-24 of the Second Cause of Action, Paragraphs 30-33 of the Fourth Cause of Action as though fully set forth herein.

1 35. Defendant violated California Business and Professions Code Section 17200 by
2 violating the laws and statutes alleged in the causes of action one, two, and four. These statutes are
3 required of California employers. By violating these statutes Defendant saved hundreds of
4 thousands of dollars a year in labor costs while violating the California Labor laws pled in this
5 lawsuit by failing to paying the Plaintiffs and proposed class for missed meal or rest breaks while
6 preventing them from taking them. In addition, Defendant required Plaintiffs to use their cellular
7 phones throughout their shifts instead of issuing company cellular phones or supplying a walkie
8 talkie like device with a long range.

9 36. Plaintiffs pray that California Business and Professions Code Section 17202 be utilized
10 to enforce the labor laws specified in all causes of action and require Defendant to pay Plaintiffs
11 for all unpaid rest breaks penalties, meal break penalties, and cellular phone bills.

12 37. Plaintiffs further pray that California Business and Professions Code Section 17203 be
13 utilized to enjoin Defendant from further engaging in the unlawful and unfair business practices
14 specified in this cause of action.

15 38. Under this cause of action, Plaintiffs also pray that equitable relief, restitutionary relief,
16 and all remedies under this cause of action going back four years from the filing of this lawsuit.
17 Plaintiffs further pray for equitable relief in Defendant being responsible for a judgment that pays
18 Plaintiffs for an hour of pay for each missed meal break and rest break.

19
20 SIXTH CAUSE OF ACTION

21 CALIFORNIA LABOR CODE SECTION 2699, 2699.3 PAGA PENALTIES
22 (AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)
23

24 39. Plaintiffs reallege the information set forth in Paragraphs 1-16, Paragraphs 17-21 of the
25 First Cause of Action, Paragraphs 22-24 of the Second Cause of Action, Paragraphs 25-29 of the
26 Third Cause of Action as though fully set forth herein.

27 40. On April 10, 2019 Plaintiffs complied with California Labor Code Section 2699.3 by
28 exhausting administrative remedies under California Labor Code Section 2699, et. seq. by causing

1 Exhibit 1 to this complaint to be filed with the Labor Workforce Development Agency/Department
2 of Industrial Relations. The last page of Exhibit 1 is confirmation from the Labor Workforce
3 Development Agency they received Exhibit 1. Exhibit 2 demonstrates Plaintiffs sent, via certified
4 mail, a copy of the Exhibit 1 filing to the designated agent(s) for service of process on Defendant.
5 In addition Plaintiffs paid said agency the \$75.00 filing fee for filing a PAGA action. More than the
6 sixty-five days passed after the sending of Exhibit 1 before this First Amended Complaint was filed.
7 The Labor & Workforce Development Agency did not indicate an intention to investigate, and
8 Plaintiffs allege the corporate Defendant did not cure the violations specified in Exhibit 1. Under
9 California Labor Code Section 2699.3C Plaintiffs exercise their statutory right to amend their
10 existing complaint to add this Claim arising under California Labor Code Section 2699 within 65
11 days after the Labor & Workforce Development Agency ceased to indicate an intention to
12 investigate and the Defendant failed to indicate they cured their practices.

13 41. PLAINTIFFS, SHAMIKA CLARK; EVA GRAVES; AMANDA JACKSON; TIANA
14 KAYLE; ROBERTO PALOMARES; LINDA PRUITT; BEATRICE RODGER; LYNN THORN
15 were or still are all Direct Support Professionals (DSPs) in Defendant's community based program.
16 Their job was to take dependent adults, who appeared at Defendant's adult day centers, out into the
17 community. Due to Defendant's imposed 3:1 staffing ratio the Plaintiffs were not able to take rest
18 breaks or meal breaks during their seven hour shifts. Until on or about February of 2019
19 Defendant's management instructed the Plaintiffs it was too distracting to have Plaintiffs go out into
20 the community as groups. However, now that Plaintiffs can go out in the community as groups they
21 are still prevented from taking meal and rest breaks because if one of the DSPs were to take an
22 uninterrupted rest break of 10 minutes or an uninterrupted meal break of 30 minutes the required
23 staffing ratio for dependent adults would not be met. Defendant has created these issues through
24 under staffing and failing to employ somebody capable of standing in for Plaintiffs and the class
25 when they go on meal or rest breaks.

26 42. The underlying California Labor Code Section 226.7 violations create PAGA liability
27 under California Labor Code Sections 226.3, 226.5, and 226.8. The extent of the underlying 226.7
28 violations are pled in the attached first two causes of action of the lawsuit. Plaintiffs are aware

1 persons with the same job titles as them also worked at Defendant's San Marcos, El Cajon, Chula
2 Vista, and Market Place locations all within the County of San Diego, and experienced the same
3 violations pled by the Plaintiffs in this lawsuit.

4 43. Plaintiffs contend all Arc of San Diego nonexempt DSP workers in the community based
5 program going were subject to California Labor Code Section 226.7 violations for failure to permit
6 meal or rest breaks and/or pay for missed rest and meal breaks. Plaintiffs believe there are
7 approximately 80-100 people in the PAGA group. The potential PAGA penalties are \$600.00 per
8 paycheck, per employee in the PAGA group. These violations go back one year from April 10,
9 2019.

10 44. Plaintiffs and the group PAGA claims are for pray for California Labor Code Section
11 2699(f) and (g) remedies for any violation and/or remedy under California Labor Code 2699 on
12 behalf of similarly aggrieved employees as well as themselves.

13 45. Plaintiffs pray for attorney fees under California Labor Code Section 2699(g) which
14 provide for attorney fees and costs.

15 For all causes of action, Plaintiffs pray for:

- 16
- 17 1. For all costs and disbursements incurred in this suit;
 - 18 2. For such other and further relief as the Court deems just and proper;
 - 19 3. For interest, including prejudgment interest, on all causes of action other than the Fifth,
20 and statutory interest where allowed based upon the cause of action pled;
- 21

22 For the First and Second Causes of Action:

- 23
- 24 4. For one hour of pay for all missed meal or rest breaks under California Labor Code
25 Section 226.7 and a ruling the meal break waiver that pertains to Plaintiffs and the class is invalid
26 and injunctive relief based thereupon;
- 27

28 For the Third Cause of Action:

1
2 5. For California Labor Code Section 226 penalties up to \$4,000 per

3 Plaintiff and class member;

4 6. For injunctive Relief;

5 7. For attorney fees under California Labor Code Sections 226 and 218.5 as

6 well as interest under California Labor Code Section 218.6;

7
8 For the Fourth Cause of Action:

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10 8. Reimbursement for cellular phone costs as alleged;

11 9. Attorney fees and costs under California Labor Code Section 2802c;

12
13 For the Fifth Cause of Action for the Court to provide:

14
15 9. All equitable relief available including injunctive relief.

16
17 For the Sixth Cause of Action:

18
19 10. For California Labor Code Section 2699(f) penalties;

20 11. For California Labor Code Section 2699(g) fees and costs.

21 WHEREFORE, the Plaintiffs pray for a jury trial on all causes of action other than Fifth
22 for which the court shall provide all equitable and injunctive relief as well as injunctive relief
23 prohibiting the meal break waiver at issue in this case, and the Sixth for which there shall be court
24 relief.

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DATED: September 3, 2020

EMPLOYMENT LAWYERS GROUP

BY: 
KARL GERBER,
ATTORNEY FOR PLAINTIFFS

EXHIBIT 1

New PAGA Claim Notice



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) - Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Karl

Your Last Name *

Gerber

Firm Name (If any) *

Employment Lawyers Group

(Enter "in pro per" if you are representing yourself)

Your Email Address

employmentlawyersgroup1

Your Street Name, Number
and Suite/Apt *

13418 Ventura Blvd.

Your Mobile Phone Number

8187837300

Your City *

Sherman Oaks

Your Work Phone Number

8187837300

Your State *

California

Your Zip/Postal Code *

91423

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

SHAMIKA CLARK; EVA GRAVES; AMAN

Plaintiff/Aggrieved Employee Occupation *

Attendants of disabled people

[Add Additional Plaintiffs](#)

Employer Information

Employer Information

Employer Entity Type

Corporation

Employer Name *

THE ARCH OF SAN DIEGO

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

3030 Market Street San Diego

Employer City

San Diego

Employer State

California

Employer Zip/Postal Code

92102

Employer Industry

Other

Employer Industry for "Other"

Wage Order 5

Add additional defendants

- ☐ Add any entity other than an Individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of
Employees Impacted by
Violations

100

Notice Violations – Check All that Apply *

- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Child Labor

Specify Ages

☐ Minimum Wage

☐ Overtime

- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030-1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping

☐ Public Works (Labor Code 1720 - 1815)

☐ Apprenticeship (Labor Code 3070 - 3098)

☐ Occupational Safety and Health (Labor Code 6300 et seq)

☐ No Workers' Compensation

☐ Licensing, Registration, or Permit

☐ Unfair Immigration Activities

☐ Agricultural Labor Relations

☐ Industrial Homework

☐ Retaliation for Protected Status or Activity (Specify)

Please Provide Details of Retaliation

Other(Maybe Multiple)

☐ Other Violation

PAGA Claim Type - Check All that Apply *

☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5 - not curable subject to 2699.3(a)

☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)

☒ Includes one or more violations not listed in Labor Code 2699.5 - curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice. Filing fees should be paid by check, made out to LWDA, and sent by regular mail to:

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

The check should be accompanied by a cover letter with sufficient information to identify the notice, including the LWDA case number assigned upon submission of this form.

Parties requesting in forma pauperis status should complete a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form and submit it online with the notice below.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

☒ I declare that I have or will pay the filing fees required by statute [Labor Code section 2699.3(a)(1)(B)] according to the instructions on the PAGA home page, unless I have claimed in forma pauperis by checking the box below.

This field is required.

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File arc.pagapdf.pdf

Other Attachment – (if any) (must be a .pdf)

Choose File arc.complaint.pdf

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Submit](#)

1 EMPLOYMENT LAWYERS GROUP
KARL GERBER (SBN 166003)
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5 ATTORNEY FOR PLAINTIFFS, SHAMIKA CLARK; EVA GRAVES; AMANDA JACKSON;
TIANA KAYLE; ROBERTO PALOMARES; LINDA PRUITT; BEATRICE RODGER; LYNN
6 THORN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

FOR THE COUNTY OF SAN DIEGO

11

12

13 SHAMIKA CLARK; EVA GRAVES;
AMANDA JACKSON; TIANA KAYLE;
14 ROBERTO PALOMARES; LINDA PRUITT;
BEATRICE RODGER; LYNN THORN

15

Plaintiffs,

16

vs.

17

THE ARCH OF SAN DIEGO; DOES 1-100

18

Defendants

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22

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PLAINTIFFS complain and allege as follows:

24

25

GENERAL ALLEGATIONS

26

(Against All Named Defendants)

27

28

1. Plaintiff, SHAMIKA CLARK, has at all times relevant for this lawsuit been a resident

1 of the State of California residing in the County of San Diego, and employed by Defendant since
2 on or about May 10, 2016.

3 2. Plaintiff, EVA GRAVES, has at all times relevant for this lawsuit been a resident of the
4 State of California residing in the County of San Diego starting work at Defendant on or about
5 September of 2016.

6 3. Plaintiff, AMANDA JACKSON, has at all times relevant for this lawsuit been a resident
7 of the State of California residing in the County of San Diego, and was employed by Defendant
8 since on or about January 20, 2016 to November 9, 2018.

9 4. Plaintiff, TIANA KRIE, has at all times relevant for this lawsuit been a resident of the
10 State of California residing in the County of San Diego, and employed by Defendant since on or
11 about February 22, 2016.

12 5. Plaintiff, ROBERTO PALOMARES, has at all times relevant for this lawsuit been a
13 resident of the State of California residing in the County of San Diego, and been employed by
14 Defendant since on or about June 20, 2016.

15 6. Plaintiff, LINDA PRUITT, has at all times relevant for this lawsuit been a resident of the
16 State of California residing in the County of San Diego starting work at Defendant on or about
17 December 22, 2014.

18 7. Plaintiff, BEATRICE RODGERS, has at all times relevant for this lawsuit been a resident
19 of the State of California residing in the County of San Diego, and been employed by Defendant
20 since on or about August of 2013.

21 8. Plaintiff, LYNNA THORN, has at all times relevant for this lawsuit been a resident of
22 the State of California residing in the County of San Diego, and been employed by Defendant since
23 on or about January 11, 2014.

24 9. At all times herein mentioned, Defendant, THE ARCH OF SAN DIEGO has been a
25 California corporation maintaining a corporate office at 3030 Market Street in San Diego, California
26 92102, and employing Plaintiffs at 9575 Aero Drive in San Diego, California 92123 as described
27 in Paragraphs 1-8.

28 10. During all statutory periods Plaintiffs have worked as nonexempt persons who have

1 earned close to minimum wage from Defendant. For example, now that minimum wage is \$12.00
2 an hour in San Diego County the Plaintiffs are paid \$12.25 an hour. When minimum wage was
3 \$11.50 an hour January 1, 2017 to January 1, 2019 Plaintiffs earned \$11.50 an hour. In early 2016
4 when minimum wage was \$10.00 an hour those Plaintiffs employed by Defendant then were paid
5 \$10.10 an hour.

6 11. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate,
7 or associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive and so the
8 Plaintiff sues them by these fictitious names. Upon discovering the true names and capacities of
9 these fictitiously named Defendants, the Plaintiffs will amend this complaint to show the true names
10 and capacities of these fictitiously named defendants.

11 12. Class Definition - "All Arc of San Diego nonexempt DSP workers in the community
12 based program going back three years from the date this lawsuit was filed for the California Labor
13 Code Section 226.7 violations for failure to permit meal or rest breaks and/or pay for missed rest
14 and meal breaks, three years from the date this lawsuit was filed for the California Labor Code
15 Section 2802 cause of action for failure to reimburse for cellular phone bills, and four years back
16 for the California Business and Professions Code Section 17200 cause of action for failure to
17 provide meal and rest breaks and to reimburse for cellular phones."

18 13. Numerosity exists because hundreds of employees in the proposed class Plaintiff,
19 BEATRICE RODGERS seeks to represent were subjected to the same California Labor Code
20 Section 226.7 and 2802 violations as Plaintiffs and the proposed class representative. Plaintiff,
21 BEATRICE RODGER alleges her class claims are typical of the class. Plaintiffs are aware persons
22 with the same job titles as them also worked at Defendant's San Marcos, El Cajon, Chula Vista, and
23 Market Place locations all within the County of San Diego, and experienced the same violations
24 pled by the Plaintiffs in this lawsuit.

25 14. Common questions of law and fact predominate the inquiry into whether the putative
26 class were victims of California Labor Code Section 226.7 violations for the reasons pled in the first
27 two causes of Action, whether California Labor Code Section 226 penalties are therefore
28 appropriate, whether Plaintiffs and the proposed class should receive reimbursements for their

1 cellular phones under California Labor Code Section 2802, and whether California Business and
2 Professions Code Section 17200 relief is appropriate on the classwide issues. Numerous lawsuits
3 on this issue could lead to inconsistent factual and legal findings. The filing of this lawsuit may
4 even deter numerous lawsuits premised on the violations pled here. Superiority of classwide
5 treatment also exists because there are persons in the class who were only employed for a short
6 period of time so their damages would be too small to bring a case on their own especially if an
7 expert was needed for computations and analysis. Moreover, none of the individual damages of the
8 class members reaches Superior Court jurisdiction making it difficult and impractical to find a
9 lawyer to represent those employees. California Labor Code Section 226 issues without additional
10 claims should be brought on a classwide basis because the individual damages for Section 226 are
11 a maximum of \$4,000. In addition, injunctive relief to stop the practice for a class is beneficial to
12 the victims of the Labor Code violations.

13 15. The Plaintiffs and the proposed class are or were all Direct Support Professionals (DSPs)
14 in Defendant's community based program. Their job was to take dependent adults, who appeared
15 at Defendant's adult day centers, out into the community. Due to Defendant's imposed 3:1 staffing
16 ratio the Plaintiffs were not able to take rest breaks or meal breaks during their seven hour shifts.
17 Until on or about February of 2019 Defendant's management instructed the Plaintiffs it was too
18 distracting to have Plaintiffs go out into the community as groups. However, now that Plaintiffs can
19 go out in the community as groups they are still prevented from taking meal and rest breaks because
20 if one of the DSPs were to take an uninterrupted rest break of 10 minutes or an uninterrupted meal
21 break of 30 minutes the required staffing ratio for dependent adults would not be met. Defendant
22 has created these issues through understaffing and failing to employ somebody capable of standing
23 in for Plaintiffs and the class when they go on meal or rest breaks.

24 16. Unless otherwise alleged in this complaint, the Plaintiffs are informed, and on the basis
25 of that information and belief allege that at all times herein mentioned, each of the remaining
26 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
27 under the authority of their agency, employment, or representative capacity, with the consent of
28 her/his codefendants.

1 FIRST CAUSE OF ACTION
2 FOR MEAL BREAK VIOLATIONS
3 (AGAINST DEFENDANT AND ALL DOE DEFENDANTS)
4

5 17. Plaintiffs reallege the information set forth in Paragraphs 1-16 and incorporate those
6 paragraphs as though fully stated in this cause of action and pled for relief going back three years
7 from the date this lawsuit is filed.

8 18. California Labor Code Section 512 specifies when employees are to get meal breaks.
9 California Labor Code Section 226.7 sets forth the penalty scheme which the Murphy Court has
10 interpreted to be a wage. California Labor Code Section 516 further allows the Industrial Welfare
11 Commission to make orders about breaks and meal periods.

12 19. Under California Labor Code Section 226.7, Plaintiffs pray for one hour of pay for each
13 uninterrupted 30 minute meal break they were prevented from taking and/or not permitted before
14 the end of their fifth hour of employment.

15 20. Under California Labor Code Section 226.7 Plaintiff's pray to be paid one hour of regular
16 pay for each meal break they were prevented from taking.

17 21. Plaintiffs further pray for a ruling any meal break waivers they were required to sign
18 failed to comply with Wage Order 5 and are invalid.

19
20 SECOND CAUSE OF ACTION
21 FOR REST BREAK VIOLATIONS
22 (AGAINST DEFENDANT AND ALL DOE DEFENDANTS)
23

24 22. Plaintiffs reallege the information set forth in Paragraphs 1-16, Paragraphs 17-21 of the
25 First Cause of Action, and incorporates those paragraphs as though fully stated in this cause of
26 action and pled for relief going back three years from the date this lawsuit is filed.

27 23. California Labor Code Section 516 allows the Industrial Welfare Commission to make
28 orders about rest breaks and meal periods. Title 8 of the California Code of Regulations Section

1 11050(12) requires rest breaks be given every 3.5 hours for 10 minutes. Plaintiffs allege they were
2 not allowed to take any 10 minute uninterrupted rest breaks during their shifts.

3 24. Under California Labor Code Section 226.7, Plaintiffs pray for one hour of pay for each
4 uninterrupted 10 minute rest break they were prevented from taking.

5

6

THIRD CAUSE OF ACTION

7

FOR CALIFORNIA LABOR CODE SECTION 226 PENALTIES

8

(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)

9

10 25. Plaintiffs reallege the information set forth in Paragraphs 1-16, Paragraphs 17-21 of the
11 First Cause of Action, Paragraphs 22-24 of the Second Cause of Action, and incorporate those
12 paragraphs as though fully stated in this cause of action while pleading for relief going back three
13 years from the date this lawsuit is filed.

14

26. Defendant violated California Labor Code Section 226.7 because for all Plaintiffs
15 paychecks were wrong on each paystub because the checks did not show missed meal break or rest
16 break penalties. Accordingly, Sections 226(1) and (5) were violated for all Plaintiffs because gross
17 and net wages were not properly reflected. Missed meal and rest break penalties under Section
18 226.7 were not paid, nor reflected on the checks.

19

27. Plaintiffs pray for statutory California Labor Code Section 226(c) damages of \$50.00
20 for the first violation and \$100.00 for each subsequent violation.

21

28. Plaintiffs pray for injunctive relief under California Labor Code Section 226(h) as well
22 as attorney fees and costs in doing so.

23

29. Plaintiffs prays for attorney fees and costs under California Labor Code Section 218.5
24 and interest under 218.6.

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FOURTH CAUSE OF ACTION
FOR CALIFORNIA LABOR CODE SECTION 2802 VIOLATIONS
(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)

30. Plaintiffs reallege the information set forth in Paragraphs 1-16 and incorporate those paragraphs as though fully stated in this cause of action.

31. Defendant required Plaintiffs to own cellular phones, and use them throughout their shifts. Defendant regularly communicated with Plaintiffs on their cellular phones, including when Plaintiffs were out in the community with the dependent adults. Without Plaintiffs' cellular phones Defendant's supervisors and managers had no means of supervising and managing them. In addition, due to the population Plaintiffs were assisting it was critical that they had a means of communicating in the event of an emergency or due to any questions about the dependent adults' needs. Plaintiffs contend the use of their cellular phones was required by Defendant and reasonably necessary.

32. Plaintiffs pray for reimbursement for cellular phone bills during the period of time they were employed by Defendant within the statutory period of this California Labor Code Section 2802 cause of action which they contend is three years from the date this lawsuit was filed.

33. Plaintiff pray for attorney fees and costs under California Labor Code Section 2802c for the purpose of enforcing their rights in this cause of action under California Labor Code Section 2802.

FIFTH CAUSE OF ACTION
FOR BUSINESS & PROFESSIONS CODE VIOLATIONS
(AGAINST ALL NAMED DEFENDANTS AND ALL DOE DEFENDANTS)

30. Plaintiffs reallege the information set forth in Paragraphs 1-16, Paragraphs 17-21 of the First Cause of Action, Paragraphs 22-24 of the Second Cause of Action, Paragraphs 30-33 of the Fourth Cause of Action as though fully set forth herein.

1 31. Defendant violated California Business and Professions Code Section 17200 by
2 violating the laws and statutes alleged in the causes of action referenced in Paragraph 30. These
3 statutes are required of California employers. By violating these statutes Defendant saved hundreds
4 of thousands of dollars a year in labor costs while violating the California Labor laws pled in this
5 lawsuit by failing to paying the Plaintiffs and proposed class for missed meal or rest breaks while
6 preventing them from taking them. In addition, Defendant required Plaintiffs to use their cellular
7 phones throughout their shifts instead of issuing company cellular phones or supplying a walkie
8 talkie like device with a long range.

9 32. Plaintiffs pray that California Business and Professions Code Section 17202 be utilized
10 to enforce the labor laws specified in all causes of action and require Defendant to pay Plaintiffs
11 for all unpaid rest breaks penalties, meal break penalties, and cellular phone bills.

12 33. Plaintiffs further pray that California Business and Professions Code Section 17203 be
13 utilized to enjoin Defendant from further engaging in the unlawful and unfair business practices
14 specified in this cause of action.

15 34. Under this cause of action, Plaintiffs also pray that equitable relief, restitutionary relief,
16 and all remedies under this cause of action going back four years from the filing of this lawsuit.
17 Plaintiffs further pray for equitable relief in Defendant being responsible for a judgment that pays
18 Plaintiffs for an hour of pay for each missed meal break and rest break.

19 WHEREFORE, the Plaintiff prays for a jury trial on all causes of action other than Fifth
20 for which the court shall provide all equitable and injunctive relief as well as injunctive relief
21 prohibiting the meal break waiver at issue in this case.

22 For all causes of action, Plaintiffs pray for:

- 23
- 24 1. For all costs and disbursements incurred in this suit;
 - 25 2. For such other and further relief as the Court deems just and proper;
 - 26 3. For interest, including prejudgment interest, on all causes of action other than the Fifth,
 - 27 and statutory interest where allowed based upon the cause of action pled;
 - 28

1 For the First and Second Causes of Action:

2
3 4. For one hour of pay for all missed meal or rest breaks under California Labor Code
4 Section 226.7 and a ruling the meal break waiver that pertains to Plaintiffs and the class is invalid
5 and injunctive relief based thereupon;

6
7 For the Third Cause of Action:

8
9 5. For California Labor Code Section 226 penalties up to \$4,000 per
10 Plaintiff and class member;

11 6. For injunctive Relief;

12 7. For attorney fees under California Labor Code Sections 226 and 218.5 as
13 well as interest under California Labor Code Section 218.6;

14
15 For the Fourth Cause of Action:

16
17 8. Reimbursement for cellular phone costs as alleged;

18 9. Attorney fees and costs under California Labor Code Section 2802c;

19
20 For the Fifth Cause of Action for the Court to provide:

21
22 9. All equitable relief available including injunctive relief.

23
24 DATED: April 10, 2019

EMPLOYMENT LAWYERS GROUP

25
26 BY: 

27 KARL GERBER,
28 ATTORNEY FOR PLAINTIFFS



Private Attorneys General Act (PAGA) – Filing Amended PAGA Claim Notice

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- ☐ Adding additional claims
- ☐ Adding additional corporate defendants
- ☐ Adding additional Individual/Sole proprietor defendants
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DIR PAGA Unit on behalf of

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