

1 Malte L. L. Farnaes, Esq. (SBN 222608)
malte@farnaeslaw.com
2 Christina M. Lucio, Esq. (SBN 253677)
clucio@farnaeslaw.com
3 Mitchell J. Murray (SBN 285691)
mitch@farnaeslaw.com
4 Danielle Piskor (SBN 338246)
dpiskor@farnaeslaw.com
5 **FARNAES & LUCIO, APC**
2235 Encinitas Boulevard, Suite 210
6 Encinitas, California 92024
Telephone: (760) 942-9431

7 Attorneys for Plaintiff MARK TAYLOR

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MARK TAYLOR, individually and as a
private attorney general on behalf of the
State of California,

Plaintiff,

v.

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

Defendants.

Case No. 37-2022-00004587-CU-OE-NC

COMPLAINT FOR DAMAGES FOR:

1. Civil Penalties Pursuant to Private
Attorneys' General Act of 2004 (Cal. Lab.
Code § 2698 et seq.)

1 Plaintiff MARK TAYLOR ("Plaintiff"), individually and as a private attorney general on
2 behalf of the State of California, asserts claims against Defendant ACCENTCARE, INC., a
3 Delaware corporation, and DOES 1-10, inclusive (collectively "Defendant" or "AccentCare") as
4 follows:

5 **INTRODUCTION**

6 1. This is a representative action for recovery of penalties under the Private Attorneys'
7 General Act of 2004 ("PAGA"), Cal. Lab. Code section 2698 *et seq.* PAGA permits "aggrieved
8 employees" to bring a lawsuit as a representative action on behalf of themselves and all other
9 current and former aggrieved employees, to recover civil penalties and address an employer's
10 violations of the California Labor Code.

11 2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf
12 of all current and former non-exempt clinicians employed by Defendant in the State of California
13 including but not limited to home care providers, Registered Nurses, Physical Therapists, Physical
14 Therapist Assistants, Licensed Vocational Nurses, Speech Language Pathologists, Caregivers,
15 Home Health Aides, and Certified Nursing Assistants (the "Aggrieved Employees") from one year
16 prior to the filing of the PAGA notice to the conclusions of this action.

17 3. Plaintiff brings this action on behalf of himself and the Aggrieved Employees to
18 recover civil penalties and address Defendant's violations of the California Labor Code and the
19 IWC Wage Orders.

20 4. Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an
21 employee who brings a representative action and was affected by at least one of the violations
22 alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that
23 violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing
24 to pursue penalties on behalf of the state for violations affecting the aggrieved employees at
25 AccentCare, regardless of their classification, job title, or locations in California.

26 5. In this case, Defendant violated various provisions of the California Labor Code and
27 Industrial Welfare Commission ("IWC") Wage Orders. As set forth below, AccentCare maintained
28 and implemented policies and procedures which resulted in a failure to pay wages for all hours

1 worked under California Labor Code sections 226.2, 1194, and 1197¹ including failure to separately
2 compensate for “non-productive” time separate from any piece-rate compensation such as time
3 spent between visits, travel time to and from visits, documentation/charting time, completing
4 COVID-19 daily attestations, and care coordination time; failure to properly calculate and pay
5 overtime at the regular rate of pay for all hours worked in excess of eight hours in a workday, the
6 first eight hours on the seventh consecutive workday, and/or forty hours in a workweek and double
7 wages for all hours worked in excess of twelve hours in a workday or eight hours on the seventh
8 consecutive workday in a workweek under section 510; failure to provide meal periods under
9 sections 512, 226.7 and the applicable wage order; failure to authorize and permit rest periods under
10 section 226.7 and the applicable wage order; failure to separately compensate for rest periods at the
11 proper rate under section 226.2; failure to timely pay all wages owed upon separation under sections
12 201, 202, 203; failure to timely pay all wages owed during employment under section 204; failure
13 to pay sick leave under section 246; failure to provide accurate, itemized wage statements under
14 section 226; failure to reimburse business expenses under section 2802; and failure to provide a
15 safe and healthful place of employment under sections 6300 *et seq.* and 6400 *et seq.*

16
17 6. This action is timely because Plaintiff suffered from a violation or numerous
18 violations of the California Labor Code within one year of the date on which a PAGA notice was
19 sent to the LWDA via online submission. More than 65 days have passed, and no response has
20 been received by the LWDA, thereby satisfying the notice requirement under the statute and
21 permitting Plaintiff to proceed with this action in a representative capacity.

22 **JURISDICTION AND VENUE**

23 7. The California Superior Court has jurisdiction over this action pursuant to
24 California Constitution Article VI, Section 10, which grants the Superior Court “original
25 jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which
26 this action is brought do not give jurisdiction to any other court.

27 8. This Court has jurisdiction over Defendants because, upon information and belief,

28 ¹ Undesignated statutory references are to the California Labor Code.

1 Defendants are either residents of California, have sufficient minimum contacts in California, or
2 otherwise intentionally avails themselves of the California market so as to render the exercise of
3 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
4 substantial justice. Further, Defendants have done and are doing business in California and in San
5 Diego County by maintaining and operating offices in San Diego County, California. The unlawful
6 acts alleged herein have a direct effect on Plaintiff and the Aggrieved Employees within San Diego
7 County and throughout the State of California and Defendants have employed numerous Aggrieved
8 Employees in San Diego County and throughout the State of California.

9 9. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because Plaintiff worked for Defendants in this County and Defendants (i)
11 currently maintains and at all relevant times maintained offices and facilities in this County and/or
12 conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged
13 in this County against Plaintiff and Aggrieved Employees.

14 **PARTIES**

15 10. Defendant AccentCare is a Delaware corporation doing business in the state of
16 California. It is based at 17855 North Dallas Pkwy., Suite 200, Dallas, TX 75287.

17 11. Plaintiff Mark Taylor is an individual domiciled and residing in San Diego
18 County, California.

19 12. Plaintiff and the members of the Aggrieved Group of Aggrieved Employees were
20 employed by Defendant as Aggrieved Employees, however titled, in the State of California from
21 one year prior to the filing of the PAGA notice to the conclusion of this action.

22 13. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto,
23 have been Aggrieved Employees within the meaning of the California Labor Code, and the
24 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
25 protections of the IWC Wage Orders and the Labor Code.

26 14. Plaintiff is informed and believes, and thereon alleges, that Defendant is and was
27 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
28 requirements of California's wage and employment laws.

15. Whenever in this complaint reference is made to any act, deed, or conduct of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of Defendant's officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendant.

16. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

17. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendant and of each other; that Defendant and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendant is liable to the extent of the liability of the Defendant as alleged herein.

18. Plaintiff is further informed and believes, and thereon allege, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendant, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendant in this complaint, but were employees and/or agents of Defendant, such individuals, at all relevant times acted on behalf of Defendant named in this complaint within the scope of their respective employments.

FACTUAL ALLEGATIONS

19. AccentCare employed Plaintiff since approximately December 2015 as a Physical Therapist. As a Physical Therapist, Plaintiff's job duties were to, among others, assess and evaluate therapeutic/rehabilitative/functional status and participate in developing a total plan of care, direct

1 physical therapy treatment, instruct patients/family/caretakers in the use and care of therapeutic
2 appliances, and prepare and submit clinical notes.

3 20. As a Physical Therapist, Plaintiff was classified as a non-exempt employee and paid
4 on a per diem or point based compensation model.

5 21. Under AccentCare's point based compensation model, Aggrieved Employees were
6 paid a certain number of points for each type of visit, regardless of the amount of time spent on
7 each visit.

8 22. All Aggrieved Employees are similarly situated in that they are all subject to
9 Defendant's uniform policies and systemic practices as specified herein.

10 23. Defendant suffered or permitted Plaintiff and, upon information and belief, the
11 Aggrieved Employees to perform work without pay. By way of example, as a per-diem field
12 clinician, Plaintiff was not paid for "non-productive" or "non-activity" time including but not
13 limited to time spent between visits, travel time to and from visits, documentation/charting time,
14 completing COVID-19 daily attestations, and care coordination time.

15 24. Defendant knew or should have known that Plaintiff and the Aggrieved Employees
16 were working time off-the-clock and were not being properly compensated for that time because
17 Plaintiff and Aggrieved Employees were required to record all hours worked including travel time
18 to patient visits, in home time with patients, care coordination time, documentation, and meeting
19 time.

20 25. In addition, Plaintiff and the Aggrieved Employees worked more than eight (8)
21 hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such time
22 at a rate of time and one-half the employee's regular rate of pay.

23 26. In addition, Plaintiff and the Aggrieved Employees worked in excess of twelve
24 (12) hours in a day and/or eight (8) hours on the 7th consecutive day of work, but were not
25 properly paid for such time at a rate of two times the employee's regular rate of pay.

26 27. Upon information and belief, Defendant failed to incorporate all forms of non-
27 discretionary compensation into the regular rate, including differentials, per diem compensation,
28 and compensation for non-productive time. This resulted in systemic underpayment of overtime,

1 double-time, and premiums.

2 28. In part because of the above violations, Defendant failed to properly compensate
3 Plaintiff and the Aggrieved Employees sick pay at the proper rate.

4 29. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
5 excess of five hours without being provided a lawful meal period and, on occasion, over ten hours
6 in a day without being provided a second lawful meal period as required by law.

7 30. Indeed, during the relevant time, as a consequence of Defendant's scheduling
8 practices, work demands, and Defendant's policies and practices, Defendant frequently failed to
9 provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute
10 meal periods as required by law. For example, Plaintiff was scheduled to perform a certain
11 number of patient visits during the day including travelling to and between visits which did not
12 allow for the opportunity to take uninterrupted, off-duty meal periods. Indeed, Plaintiff, and upon
13 information and believe other Aggrieved Employees, was forced to take short or forego meal
14 periods or risk being written up and potentially disciplined for being late to his visits.

15 31. On information and belief, Plaintiff and Aggrieved Employees did not waive their
16 rights to a first or second meal period.

17 32. Despite the above-mentioned meal period violations, Defendant failed to
18 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
19 one additional hour of pay at their regular rate of compensation as required by California law when
20 meal periods were not timely or lawfully provided in a compliant manner.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendant know, should
22 know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees were
23 entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
24 accurately calculated compensation.

25 34. In addition, during the relevant time frame, Plaintiff and the Aggrieved Employees
26 were systematically not authorized and permitted to take one net ten-minute paid, rest period for
27 every four hours worked or major fraction thereof, which is a violation of the Labor Code and
28 IWC wage order.

1 35. Defendant maintained and enforced staffing and scheduling practices, policies, and
2 imposed work demands that frequently required Plaintiff and Aggrieved Employees to forego
3 their lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction
4 thereof. Such requisite rest periods were not timely authorized and permitted.

5 36. For example, Plaintiff was scheduled to perform a certain number of patient visits
6 during the day including travelling to and between visits which did not allow for the opportunity
7 to take uninterrupted rest periods. Indeed, Plaintiff, and upon information and believe other
8 Aggrieved Employees, was forced to take short or forego rest periods or risk being written up and
9 potentially disciplined for being late to his visits.

10 37. Despite the above-mentioned rest period violations, Defendant did not compensate
11 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
12 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
13 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
14 permitted.

15 38. In addition, Plaintiff is informed and believes that Defendant failed to separately
16 compensate for rest periods at the proper rate pursuant to Labor Code section 226.2 as a result of
17 Defendant's failure to pay Plaintiff and the Aggrieved Employees for all hours worked including
18 non-productive time.

19 39. Defendant failed to reimburse Plaintiff and the Aggrieved Employees for all
20 expenses incurred in the discharge of their work duties, including but not limited to
21 reimbursement for mileage and cell phone expenses.

22 40. Defendant also failed to provide accurate, lawful itemized wage statements to
23 Plaintiff and the Aggrieved Employees in part because of the above specified violations.

24 41. Defendant have also made it difficult to determine applicable rates of pay and
25 account with precision because they did not implement and preserve a lawful record-keeping
26 method to record all hours worked, and non-provided rest and meal periods owed to employees as
27 required for Aggrieved Employees by 29 U.S.C. section 211(c), California Labor Code section
28 226, and applicable California Wage Orders.

42. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendant knew that at the time of termination of employment (or within 72 hours thereof for resignations without prior notice as the case may be) they had a duty to accurately compensate the Aggrieved Employees for all wages owed including straight time, overtime, meal and rest period premiums, vacation pay, and expense reimbursement and that Defendant had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

43. In addition to any derivative violation under Labor Code section 201-202 for failure to pay all wages owed at terminations, Defendant failed to pay the former Aggrieved Employees all wages owed at the time of termination as required by law and did not pay waiting time penalties.

44. Plaintiff and the Aggrieved Employees are covered by applicable California IWC Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title 8, section 11000 *et seq.*

45. Further, Defendant failed to provide a safe and healthful place of employment for Plaintiff and the Aggrieved Employees during the COVID-19 pandemic including but not limited to lack of information regarding client COVID-19 diagnoses and proper safeguards for care providers.

FAILURE TO PAY MINIMUM WAGES

46. Labor Code section 204 establishes the fundamental right of all employees in the State of California to be paid wages, including minimum wage, straight time and overtime, in a timely fashion for their work.

47. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

48. Labor Code section 1197 provides: The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees,

1 and the payment of a lower wage than the minimum so fixed is unlawful.

2 49. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
3 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
4 Wage Order(s).

5 50. The applicable wage orders and California Labor Code sections 1197 and 1182.12
6 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
7 state law.

8 51. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
9 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
10 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
11 equal to the unpaid wages and interest accrued thereon.

12 52. Employers must pay employees for "other nonproductive time" at an hourly rate
13 that is not less than minimum wage. Lab. Code § 226.2(a)(1). "Other nonproductive time" is
14 defined as "time under the employer's control, exclusive of rest and recovery periods, that is not
15 directly related to the activity being compensated on a piece-rate basis." Lab. Code § 226.2;

16 53. The IWC Wage Orders define "hours worked" as "the time during which an
17 employee is subject to the control of an employer, and includes all the time the employee is suffered
18 or permitted to work, whether or not required to do so."

19 54. Plaintiff and Aggrieved Employees consistently worked hours for which they were
20 not paid because Defendant frequently required Plaintiff and the Aggrieved Employees to work off
21 the clock, including but not limited to spent between visits, travel time to and from visits,
22 documentation/charting time, completing COVID-19 daily attestations, and care coordination time,
23 though Defendant tracked Plaintiff's time performing each task.

24 55. Plaintiff is informed and believes that Defendant was aware that Plaintiff and the
25 Aggrieved Employees were working off the clock and that they should have been paid for this time.

26 56. Defendant's policy and practice of not paying all minimum wages violates
27 California Labor Code sections 204, 210, 216, 226.2, 558, 1182.12, 1194, 1197, 1197.1, 1198, and
28 the applicable wage order.

FAILURE TO PAY OVERTIME OWED

57. During all relevant periods, Defendant required Plaintiff and the Aggrieved Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek.

58. During all relevant periods, both the California Labor Code sections 1194, 1197, 510, 1198, and the pertinent wage order required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

59. During all relevant periods, Defendant had a uniform policy of requiring Plaintiff and the Aggrieved Employees to work in excess of eight (8) hours in a workday and/or in excess of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their regular rate of pay. Upon information and belief, Defendant also failed to properly compensate Plaintiff and the Aggrieved Employees for hours worked in excess of twelve (12) hours in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek at a rate of two times the regular rate of the employee.

60. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

61. AccentCare failed to pay Plaintiff for all overtime hours worked. Plaintiff was required to record all hours worked including travel time to patient visits, in home time with patients, care coordination time, documentation, and meeting time. Despite tracking his hours worked, AccentCare failed to pay Plaintiff, and upon information and belief the Aggrieved Employees, overtime wages for all hours in excess 8 hours in a day, 40 hours in a workweek, and/or the first 8 hours on the 7th consecutive day of work.

1 62. Defendant also failed to properly calculate the regular rate of pay for overtime wages
2 because, upon information and belief, it did not include all forms of compensation including per
3 diem compensation, and compensation for non-productive time.

4 63. Defendant also failed to pay Plaintiff and the Aggrieved Employees two times the
5 regular rate of pay for all double time hours worked in excess of 12 hours in a day or 8 hours on
6 the 7th consecutive day of work.

7 64. As a result, Defendant failed to pay Plaintiff and the Aggrieved Employees earned
8 overtime wages and such employees suffered damages as a result.

9 65. Defendant knew or should have known Plaintiffs and the Aggrieved Employees
10 were undercompensated as a result of these practices.

11 ***FAILURE TO PROVIDE LAWFUL MEAL PERIODS***

12 66. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
13 period of more than five (5) hours without providing a meal break of not less than thirty (30)
14 minutes in which the employee is relieved of all of his or her duties, except that when a work period
15 of not more than six (6) hours will complete the day's work the meal period may be waived by
16 mutual consent of the employer and employee.

17 67. During the relevant time, Defendant failed to provide Plaintiff and Aggrieved
18 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within
19 the first five hours of a shift.

20 68. As a consequence of Defendant's policies and practices, requirements, demands,
21 coverage and staffing, Plaintiff and the Aggrieved Employees were often required to forego such
22 meal periods, take shortened meal periods, and/or commence their meal periods into and beyond
23 the sixth hour of their shifts.

24 69. Upon information and belief, Plaintiff and the Aggrieved Employees were not paid
25 one hour of pay at their regular rate of compensation for each day that a meal period was not
26 lawfully provided, in part, because any such payments failed to include all forms of compensation
27 in the regular rate.

28 70. Moreover, as a matter of policy and practice, upon information and belief, the

1 Aggrieved Employees were also not provided second meal periods on days when shifts exceeded
2 ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal
3 period. On information and belief, Plaintiff and the Aggrieved Employees did not waive their rights
4 to a second meal period on shifts in excess of ten hours.

5 71. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved
6 Employees have been damaged in an amount according to proof at time of trial.

7 ***FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS***

8 72. Pursuant to the IWC wage orders applicable to Plaintiff's and Aggrieved
9 Employees' employment by Defendant, "Every employer shall authorize and permit all employees
10 to take rest periods, which insofar as practicable shall be in the middle of each work period....
11 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten
12 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
13 period time shall be counted as hours worked, for which there shall be no deduction from wages."

14 73. Labor Code section 226.7(a) prohibits an employer from requiring any employee to
15 work during any rest period mandated by an applicable order of the IWC.

16 74. Defendant were required to authorize and permit employees such as Plaintiff and
17 Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the total
18 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction
19 thereof, with no deduction from wages.

20 75. Moreover, Labor Code section 226.2 requires Defendant to compensate employees
21 who are compensated on a piece rate basis for rest and recovery periods and other non-productive
22 time separate from any piece rate compensation at an average hourly rate determined by dividing
23 the total compensation for the workweek, exclusive of compensation for rest and recovery periods
24 and any premium compensation for overtime, by the total hours worked during the workweek,
25 exclusive of rest and recovery periods.

26 76. Despite said requirements of the IWC wage orders applicable to Plaintiff's and
27 Aggrieved Employee's employment with Defendant, Defendant failed and refused to authorize and
28 permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for every

1 four (4) hours worked, or major fraction thereof. Such rest breaks, when provided, were untimely
2 or less than net ten minutes because of the work requirements imposed by Defendant, and frequent
3 calls during rest periods.

4 77. Defendant did not pay Plaintiff one additional hour of pay at his regular rate of pay
5 for each day that a rest period violation occurred. On information and belief, the other members of
6 the Aggrieved Employees endured similar violations as a result of Defendant' rest period policies
7 and practices and Defendant did not pay said Aggrieved Employees premium pay as required by
8 law.

9 78. Defendant also failed to separately compensate for rest periods at the proper rate
10 pursuant to Labor Code section 226.2 as a result of Defendant's failure to pay Plaintiff and the
11 Aggrieved Employees for all hours worked including non-productive time.

12 79. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to
13 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
14 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
15 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
16 Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours, and
17 by their failure to provide compensation for such unprovided rest periods as alleged herein,
18 Defendant willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC
19 Wage Order(s).

20 ***FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING***
21 ***EMPLOYMENT***

22 80. Labor Code section 204 requires that all wages are due and payable twice in each
23 calendar month.

24 81. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became
25 due and payable to each employee in each month that he or she was not provided with a meal period
26 or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

27 82. Defendant violated Labor Code § 204 by systematically refusing to pay wages due
28 under the Labor Code.

1 83. Labor Code section 210 (a) provides that “In addition to, and entirely independent
2 and apart from, any other penalty provided in this article, every person who fails to pay the wages
3 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
4 1197.5, shall be subject to a penalty as follow:

5 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
6 employee.

7 (2) For each subsequent violation, or any willful or intentional violation, two hundred
8 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
9 unlawfully withheld.

10 ***FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION***

11 84. Labor Code section 201(a) states: “If an employer discharges an employee, the
12 wages earned and unpaid at the time of discharge are due and payable immediately.”

13 85. Labor Code section 202(a) states:

14 If an employee not having a contract for a definite period quits his or her
15 employment, his or her wages shall become due and payable not later than 72 hours
16 thereafter, unless the employee has given 72 hours previous notice of his or her
17 intention to quit, in which case the employee is entitled to his or her wages at the
18 time of quitting. Notwithstanding any other provision of law, an employee who
19 quits without providing a 72-hour notice shall be entitled to receive payment by
20 mail if he or she so requests and designates a mailing address. The date of the
21 mailing shall constitute the date of payment for purposes of the requirement to
22 provide payment within 72 hours of the notice of quitting.

23 86. Plaintiff is informed and believe that Defendant willfully failed to timely pay all
24 wages due to Aggrieved Employees who have separated from their employment with Defendant
25 for work performed including wages for “non-productive” time, rest periods, overtime wages, and
26 premium wages for missed rest periods. As a result, Defendant violated Labor Code sections 201
27 and 202.

28 ***KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED***

EMPLOYEE WAGE STATEMENT PROVISIONS

87. California Labor Code § 226 provides an employer must furnish employees with an “accurate itemized” statement in writing showing: “(1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions..., (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the legal entity that is the employer..., (8) the name and address of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

88. Moreover, pursuant to Labor Code § 226.2, an employee paid on a piece-rate basis shall be, among other things, compensated: (1) for rest and recovery periods and other nonproductive time separate from any piece-rate compensation; (2) the itemized wage statements shall separate state (i) the total hours of compensable rest and recovery periods; (ii) the rate of compensation; and (iii) the gross wages for those periods during the pay period.

89. Defendant violated Labor Code § 226.2 by failing to provide Plaintiff and, upon information and belief, other aggrieved employees with itemized accurate wage statements showing, inter alia,: (1) the total hours worked including non-productive time, (2) gross wages earned, (3) net wages earned, (4) all hourly and overtime rates, (5) sick leave hours; (6) total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods under Labor Code § 226.2(a)(2)(A); and (7) total hours of nonproductive time, the rate of compensation, and gross wages paid for that time under Labor Code § 226.2(a)(2)(B). As a result of violations of California Labor Code §§ 226(a) and 226.2, AccentCare is liable for civil penalties pursuant to California Labor Code §§ 226(e), 226.3 and 2698 *et seq.*

90. By failing to keep accurate records and provide accurate itemized wage statements as required by section 226, Defendant has injured Plaintiff and Aggrieved Employees by making it confusing and difficult to calculate the unpaid wages and losses and expenditures (including wages, interest, and penalties thereon) due to Aggrieved Employees.

1 ***FAILURE TO PAY SICK LEAVE***

2 91. Labor Code 246 (a)(1) provides: an employee who, on or after July 1, 2015, works
3 in California for the same employer for 30 or more days within a year from the commencement of
4 employment is entitled to pad sick days as specified.

5 92. Labor Code section 246(l) provides “For the purposes of this section, an employer
6 shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for
7 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
8 workweek in which the employee uses paid sick time, whether or not that employee actually
9 works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated
10 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s
11 total hours worked in the full pay periods of the prior 90 days of employment.”

12 93. In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper
13 rate because, in part, it failed to take all forms of compensation, including incentives, per diem
14 compensation, and other wages into account in calculating the regular rate.

15 ***FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES***

16 94. Labor Code § 2802 requires Defendant to indemnify employees for necessary
17 expenditures incurred in direct consequence of the discharge of his or her duties.

18 95. AccentCare failed to reimburse Plaintiff for all expenses incurred in the discharge
19 of his duties, including but not limited to reimbursement for mileage traveling to patient visits and
20 cell phone expenses. For example, Respondent reimbursed \$0.47 per mile, which is less than the
21 IRS mileage rate of \$0.545 in 2018, \$0.58 in 2019, \$0.575 in 2020, and \$0.56 in 2021 from and
22 less than the actual costs incurred by Claimant.

23 ***FAILURE TO PROVIDE SAFE AND HEALTHFUL PLACE OF EMPLOYMENT***

24 96. Defendant also violated Labor Code §§6400 et seq., by failing to provide a place
25 of employment that this safe and healthful.

26 97. Defendant violated Labor Code §6401 by failing to furnish and use safety devices
27 and safeguards, and adopt and use practices, means, methods, operations, and processes which are
28 reasonably adequate to render such employment and place of employment safe and healthful.

98. Defendant violated Labor Code §6401.7 by failing to implement and maintain an effective written injury prevention program.

99. Defendant violated Labor Code §6402 by requiring and permitting an employee to go or be in any employment or place of employment which is not safe and healthful.

100. In addition, Defendant violated Labor Code §6403 by failing or neglecting to provide and use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate methods and processes, or to do every other thing reasonably necessary to protect the life, safety and health of employees.

101. By way of example, Defendant knew or should have known that certain patients had been diagnosed with COVID-19, and failed to inform Plaintiff and, upon information and belief, the Aggrieved Employees, therefore unnecessarily exposing Plaintiff and Aggrieved Employees to potential infection.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004,

LABOR CODE SECTION 2698 ET SEQ.

102. Plaintiff incorporates by reference each and every paragraph above, and realleges each and every allegation contained above as though fully set forth herein.

103. On November 22, 2021, Plaintiff gave written notice by online submission to the LWDA and by certified mail to Defendant of Defendant's violations of numerous provisions of the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required by statute.

104. Plaintiff is an “aggrieved employee” as defined in Labor Code Section 2699(A), as he was employed by Defendant during the statutory period and suffered one or more of the Labor Code violations set forth herein. He seeks to recover of himself and all other current and former aggrieved employees of Defendant the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

1 105. 65 days have passed, and no response has been received from the LWDA.
2 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

3 106. Plaintiff has exhausted all administrative procedures required of them under the
4 Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing
5 forward this cause of action.

6 107. Pursuant to Labor Code section 2699(a), Plaintiff seeks to recover civil penalties
7 for which Defendant are liable due to numerous Labor Code violations as set forth in this
8 Complaint.

9 108. Plaintiff seeks to recover the PAGA civil penalties through a representative action
10 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
11 4th 969. Class certification of the PAGA claims is not required.

12 109. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover
13 civil penalties for which Defendant are liable due to numerous Labor Code and Wage Order
14 violations as set forth in this Complaint.

15 110. Specifically, Plaintiff, on behalf of himself and the Aggrieved Employees, seek
16 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 17 a. Defendant' failure to comply with the requirement of Labor Code § 1182.12,
18 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
19 hour worked;
- 20 b. Defendant's failure to comply with the requirement of Labor Code § 226.2 to
21 pay at least minimum wage for "non-productive" time;
- 22 c. Defendant's failure to comply with the requirement of Labor Code §§ 204 and
23 210, to pay, without condition and within the time set by the applicable article,
24 all wages, or parts thereof;
- 25 d. Defendant's failure to comply with the requirement of Labor Code §§225.5 to
26 pay wages due;
- 27 e. Defendant's failure to comply with the requirement of Labor Code §§201 and
28 202 to pay wages due to former employees;

- 1 f. Defendant's failure to comply with the requirement of Labor Code §203 to pay
2 waiting time penalties to former employees;
- 3 g. Defendant's failure to comply with the requirement of Labor Code §226.7,
4 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest
5 breaks;
- 6 h. Defendant's failure to comply with the requirement of Labor Code §§226.7,
7 1198, and IWC Wage Orders to pay one hour of premium pay at the regular
8 rate for each statutorily required rest break that was not lawfully authorized
9 and permitted;
- 10 i. Defendant's failure to comply with the requirement of Labor Code § 226.2 to
11 separately compensate for rest and recover periods;
- 12 j. Defendant's failure to comply with the requirement of Labor Code §226.7,
13 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minutes
14 off duty meal periods;
- 15 k. Defendant's failure to comply with the requirement of Labor Code §226.7,
16 1198, and IWC Wage Orders to pay one hour of premium pay at the regular
17 rate for each lawful meal break that was not provided;
- 18 l. Defendant's failure to provide accurate compliant wage statements under
19 Labor Code section 226;
- 20 m. Defendant's failure to reimburse necessary expenses in violation of Labor
21 Code § 2802;
- 22 n. Defendant's failure to provide a safe and healthful place of employment in
23 violation of Labor Code § 6300 et seq;
- 24 o. Defendant's failure to pay sick leave at the proper rate in violation of Labor
25 Code §246.

26 111. Plaintiff seeks civil penalties for Defendant's violation of Labor Code provisions
27 for which a civil penalty is specifically provided, including but not limited to the following:
28

- 1 p. Pursuant to Labor Code §210, for violations of Labor Code § 204, Defendant
2 are subject to a civil penalty in the amount of one hundred dollars (\$100) for
3 the initial violation for each failure to pay each employee and two hundred
4 (\$200) per employee for violations in subsequent pay periods plus 25% of the
5 amount unlawfully withheld.
- 6 q. Pursuant to Labor Code §226.3, for violations of Labor Code § 226 (a)
7 Defendant is subject to a civil penalty in the amount of two hundred and fifty
8 dollars (\$250) per aggrieved employee for the initial pay period where a
9 violation occurs and one thousand dollars (\$1,000) per aggrieved employee for
10 violations in subsequent pay periods.
- 11 r. Pursuant to Labor Code §558(a), “[a]ny employer or other person acting on
12 behalf of an employer who violated, or causes to be violated, a section of this
13 chapter or any provisions regulating hours and days of work in any order of the
14 Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall
15 be subject to a civil penalty, in addition to any other penalty provided by law,
16 of fifty dollars (\$50) for initial violations for each underpaid employee for each
17 pay period for which the employee was underpaid and one hundred dollars
18 (\$100) for each subsequent violations for each underpaid employee for each
19 pay period for which the employee was underpaid.
- 20 s. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to
21 any employee a wage less than the minimum fixed by an order of the
22 commission, shall be subject to a civil penalty as follows: for any initial
23 violation that is intentionally committed, one hundred dollars (\$100) for each
24 underpaid employee for each pay period for which the employee is underpaid;
25 and for each subsequent violation of the same offense, two hundred fifty
26 dollars (\$250) for each underpaid employee for each pay period for which the
27 employee is underpaid regardless of whether the initial violation was
28 intentionally committed.

1 112. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under
2 Labor Code §2698 et seq. and 2699 because of Defendant's violation of numerous provisions of
3 the California Labor Code and IWC Wage Orders.

4 113. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
5 twenty-five (25%) of all penalties due under California law, interest, attorneys' fees and costs.

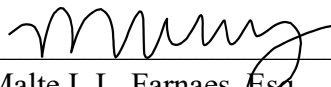
6 114. Under Labor Code §2699, the State of California should be awarded seventy-five
7 percent (75%) of the penalties due under California law.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

- 10 1. For penalties according to proof, pursuant to Labor Code §§2698, et seq. for the
11 violations specified above;
- 12 2. For penalties under Labor Code section 210, 266.3, 1197.1, and 2699(a) and (f);
- 13 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, California Civil
14 Code §§3287, 3288, and/or any other applicable provisions providing for pre-judgment
15 interest;
- 16 4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226,
17 2699, and/or Code of Civil Procedure 1021.5, and/or any other applicable provisions
18 providing for attorneys' fees and costs; and
- 19 5. For such other and further relief as the Court deems proper.
- 20

21 Dated: February 4, 2022


22 Malte L.L. Farnaes, Esq.
23 Christina M. Lucio, Esq.
24 Mitchell J. Murray, Esq.
Danielle Piskor, Esq.

25 Attorneys for MARK TAYLOR

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