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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MARK TAYLOR and ANGELICA
TRUJILLO, individually and as private
attorneys general on behalf of the State of
California

Plaintiffs,

v.

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

Defendants.

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

Assigned For All Purposes To:
Hon. Cynthia A. Freeland, Dept. N-27

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY MINIMUM WAGES;
2. FAILURE TO PAY OVERTIME WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO AUTHORIZE AND PERMIT
PAID REST PERIODS;
5. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS;
6. FAILURE TO TIMELY PAY WAGES
DURING EMPLOYMENT;
7. FAILURE TO REIMBURSE NECESSARY
BUSINESS EXPENSES;

8. FAILURE TO TIMELY PAY WAGES, INCLUDING PAID TIME OFF, UPON TERMINATION;
9. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.; AND
10. CIVIL PENALTIES PURSUANT TO PRIVATE ATTORNEYS' GENERAL ACT OF 2004 (CAL. LAB. CODE § 2698 ET SEQ.).

Plaintiffs MARK TAYLOR and ANGELICA TRUJILLO (“Plaintiffs”), individually, as class representatives, and as a private attorneys general on behalf of the State of California, on behalf of themselves and all others similarly situated, allege against Defendant ACCENTCARE, INC., a Delaware corporation, and DOES 1-10, inclusive (collectively “Defendant” or “AccentCare”) as follows:

INTRODUCTION

1. Pursuant to Code of Civil Procedure section 382, Plaintiffs bring this Class Action on behalf of themselves, and a class defined as all individuals who are or previously were employed by Defendant in California as non-exempt employees during the Class Period from April 1, 2022 to January 3, 2025 (the “Class” or “Class Members”).

2. Plaintiffs allege that AccentCare maintained and implemented policies and procedures which resulted in a failure to pay wages for all hours worked under California Labor Code sections 226.2, 1194, and 1197¹ including , but not limited to, failure to separately compensate for “non-productive” time separate from any piece-rate compensation such as time spent between visits, travel time to and from visits, documentation/charting time, completing COVID-19 daily attestations, and care coordination time; failure to properly calculate and pay overtime at the regular rate of pay for all hours worked in excess of eight hours in a workday, the first eight hours on the seventh consecutive workday, and/or forty hours in a workweek and double wages for all hours worked in excess of twelve hours in a workday or eight hours on the seventh

¹ Undesignated statutory references are to the California Labor Code.

1 consecutive workday in a workweek under section 510; failure to provide meal periods under
2 sections 512, 226.7 and the applicable wage order; failure to authorize and permit rest periods under
3 section 226.7 and the applicable wage order; failure to separately compensate for rest periods at the
4 proper rate under section 226.2; failure to timely pay all wages owed, including paid time off, upon
5 separation under sections 201, 202, 203; failure to timely pay all wages owed during employment
6 under section 204; failure to pay sick leave under section 246; failure to provide accurate, itemized
7 wage statements under section 226; failure to reimburse business expenses under section 2802; and
8 failure to provide a safe and healthful place of employment under sections 6300 *et seq.* and 6400
9 *et seq.*

10 3. Defendants implemented uniform policies and practices that deprived Plaintiffs and
11 Class Members of earned wages, including minimum wages and overtime wages; necessary
12 expense reimbursements; premium wages; and lawful meal and/or rest breaks. Accordingly,
13 Plaintiffs, on behalf of themselves and all Class members, bring this class action for violation of
14 the California Labor Code, including sections 201, 202, 203, 204, 210, 225.5, 226, 226.2, 226.3,
15 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1182.12, 2802,
16 applicable IWC California Wage Orders and California.

17 4. Plaintiffs also bring this a representative action for recovery of penalties under the
18 Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698, *et seq.* PAGA
19 permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves
20 and all other current and former employees, to recover civil penalties and address an employer’s
21 violations of the California Labor Code.

22 5. Plaintiffs bring this PAGA Action on behalf of themselves and all other Aggrieved
23 Employees, defined as all individuals who are or previously were employed by Defendant in
24 California as non-exempt employees during the PAGA Period from December 1, 2020 to January
25 3, 2025 (the “Aggrieved Employees”). Plaintiffs bring this PAGA action to recover civil penalties
26 and address Defendant’s violations of the California Labor Code and the IWC Wage Orders.

27 6. Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an
28

1 employee who brings a representative action and was affected by at least one of the violations
2 alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that
3 violation, but for violations affecting other employees as well. Accordingly, Plaintiffs have
4 standing to pursue penalties on behalf of the state for violations affecting the aggrieved employees
5 at AccentCare, regardless of their classification, job title, or locations in California.

6 **JURISDICTION AND VENUE**

7 7. This class action is brought pursuant to California Code of Civil Procedure section
8 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction
9 limits of the Superior Court and will be established according to proof at trial.

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

14 9. This Court has jurisdiction over Defendants because, upon information and belief,
15 Defendants are either residents of California, have sufficient minimum contacts in California, or
16 otherwise intentionally avails themselves of the California market so as to render the exercise of
17 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
18 substantial justice. Further, Defendants have done and are doing business in California and in San
19 Diego County by maintaining and operating offices in San Diego County, California. The unlawful
20 acts alleged herein have a direct effect on Plaintiffs and the Aggrieved Employees within San Diego
21 County and throughout the State of California and Defendants have employed numerous Aggrieved
22 Employees in San Diego County and throughout the State of California.

23 10. Venue is proper in this Court pursuant to California Code of Civil Procedure
24 sections 395 and 395.5, because Plaintiffs worked for Defendants in this County and Defendants
25 (i) currently maintains and at all relevant times maintained offices and facilities in this County
26 and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein
27 alleged in this County against Plaintiffs and Aggrieved Employees.

28 **PARTIES**

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

3 12. Plaintiff Mark Taylor is an individual domiciled and residing in San Diego
4 County, California.

5 13. Plaintiff Angelica Trujillo is an individual domiciled and resident of California.

6 14. Plaintiffs are informed and believe, and thereon allege that Defendant is and was
7 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
8 requirements of California's wage and employment laws.

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

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

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

26 18. Plaintiffs are further informed and believe, and thereon allege, that at all times
27 material herein, each Defendant was completely dominated and controlled by its co-Defendants,
28 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint

1 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
2 to mean the conduct of each of the Defendant, acting individually, jointly, and severally. Whenever
3 and wherever reference is made to individuals who are not named as Defendant in this complaint,
4 but were employees and/or agents of Defendant, such individuals, at all relevant times acted on
5 behalf of Defendant named in this complaint within the scope of their respective employments.

6 **FACTUAL ALLEGATIONS**

7 19. AccentCare employed Plaintiff Trujillo as an office coordinator from approximately
8 July 2019 to April 2021 in the County of Contra Costa.

9 20. AccentCare employed Plaintiff Taylor from approximately December 2015 to
10 February 2022 as a Physical Therapist. As a Physical Therapist, Plaintiff's job duties were to,
11 among others, assess and evaluate therapeutic/rehabilitative/functional status and participate in
12 developing a total plan of care, direct physical therapy treatment, instruct patients/family/caretakers
13 in the use and care of therapeutic appliances, and prepare and submit clinical notes.

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

16 22. Under AccentCare's point based compensation model, certain employees were
17 paid a certain number of points for each type of visit, regardless of the amount of time spent on
18 each visit.

19 23. All Class Members and Aggrieved Employees are similarly situated in that they
20 are all subject to Defendant's uniform policies and systemic practices as specified herein.

21 24. Defendant suffered or permitted Plaintiffs and, upon information and belief,
22 certain Class Members to perform work without pay. By way of example, as a per-diem field
23 clinician, Plaintiff was not paid for "non-productive" or "non-activity" time including but not
24 limited to time spent between visits, travel time to and from visits, documentation/charting time,
25 completing COVID-19 daily attestations, and care coordination time.

26 25. Defendant knew or should have known that Plaintiffs and the other Class
27 Members, including, but not limited to, those paid on a per diem basis were working time off-the-
28 clock and were not being properly compensated for that time because by way of example,

1 Plaintiff and the Class Members were required to record all hours worked including travel time to
2 patient visits, in home time with patients, care coordination time, documentation, and meeting
3 time.

4 26. In addition, Plaintiff and the Class Members worked more than eight (8) hours in
5 day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate
6 of time and one-half the employee's regular rate of pay.

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

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

14 29. In part because of the above violations, Defendant failed to properly compensate
15 Plaintiff and the Class Members sick pay at the proper rate.

16 30. Plaintiffs and the Aggrieved Employees were regularly required to work shifts in
17 excess of five hours without being provided a lawful meal period and, on occasion, over ten hours
18 in a day without being provided a second lawful meal period as required by law.

19 31. Indeed, during the relevant time, as a consequence of Defendant's scheduling
20 practices, work demands, and Defendant's policies and practices, Defendant frequently failed to
21 provide Plaintiffs and the Class Members timely, legally complaint uninterrupted 30-minute meal
22 periods as required by law. For example, Plaintiffs were scheduled to perform a certain number
23 of patient visits during the day including travelling to and between visits which did not allow for
24 the opportunity to take uninterrupted, off-duty meal periods. Indeed, Plaintiffs, and upon
25 information and believe other Class Members, was forced to take short or forgo meal periods or
26 risk being written up and potentially disciplined for being late to his visits.

27 32. On information and belief, Plaintiffs and Class Members did not waive their rights
28 to a first or second meal period.

1 33. Despite the above-mentioned meal period violations, Defendant failed to
2 compensate Plaintiffs, and on information and belief, failed to compensate Class Members, one
3 additional hour of pay at their regular rate of compensation as required by California law when
4 meal periods were not timely or lawfully provided in a compliant manner.

5 34. Plaintiffs are informed and believes, and thereon alleges, that Defendant know,
6 should know, knew, and/or should have known that Plaintiff and the other Class Members were
7 entitled to receive accurate premium wages under Labor Code section 226.7 but were not receiving
8 accurately calculated compensation.

9 35. In addition, during the relevant time frame, Plaintiffs and the Class Members were
10 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
11 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
12 wage order.

13 36. Defendant maintained and enforced staffing and scheduling practices, policies, and
14 imposed work demands that frequently required Plaintiffs and Class Members to forego their
15 lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction
16 thereof. Such requisite rest periods were not timely authorized and permitted.

17 37. For example, Plaintiff Taylor was scheduled to perform a certain number of patient
18 visits during the day including travelling to and between visits which did not allow for the
19 opportunity to take uninterrupted rest periods. Indeed, Plaintiffs, and upon information and
20 believe other Class Members, was forced to take short or forgo rest periods or risk being written
21 up and potentially disciplined for being late to his visits.

22 38. Despite the above-mentioned rest period violations, Defendant did not compensate
23 Plaintiffs, and on information and belief, did not pay Class Members one additional hour of pay at
24 their regular rate as required by California law, including Labor Code section 226.7 and the
25 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
26 permitted.

27 39. In addition, Plaintiffs are informed and believes that Defendant failed to separately
28 compensate for rest periods at the proper rate pursuant to Labor Code section 226.2 as a result of

1 Defendant's failure to pay Plaintiffs and the Class Members for all hours worked including non-
2 productive time.

3 40. Defendant failed to reimburse Plaintiffs and the Class Members for all expenses
4 incurred in the discharge of their work duties, including but not limited to reimbursement for
5 mileage and cell phone expenses.

6 41. Defendant also failed to provide accurate, lawful itemized wage statements to
7 Plaintiffs and the Class Members in part because of the above specified violations.

8 42. Defendant have also made it difficult to determine applicable rates of pay and
9 account with precision because they did not implement and preserve a lawful record-keeping
10 method to record all hours worked, and non-provided rest and meal periods owed to employees as
11 required for Class Members by 29 U.S.C. section 211(c), California Labor Code section 226, and
12 applicable California Wage Orders.

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

20 44. In addition to any derivative violation under Labor Code sections 201-202 for failure
21 to pay all wages owed at terminations, Defendant failed to pay the former Class Members all wages
22 owed at the time of termination as required by law and did not pay waiting time penalties.

23 45. Plaintiffs and the Class Members are covered by applicable California IWC Wage
24 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
25 section 11000 *et seq.*

26 46. Further, Defendant failed to provide and safe and healthful place of employment for
27 Plaintiff and the Class Members during the COVID-19 pandemic including but not limited to lack
28 of information regarding client COVID-19 diagnoses and proper safeguards for care providers.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Pay Minimum Wages**

4 **(Against All Defendants)**

5 47. Plaintiffs incorporate by reference each and every paragraph above, and realleges
6 each and every allegation contained above as though fully set forth herein.

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

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

15 50. Labor Code section 1197 provides: The minimum wage for employees fixed by the
16 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
17 and the payment of a lower wage than the minimum so fixed is unlawful.

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

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

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

28 54. Employers must pay employees for "other nonproductive time" at an hourly rate

1 that is not less than minimum wage. Lab. Code § 226.2(a)(1). “Other nonproductive time” is
2 defined as “time under the employer’s control, exclusive of rest and recovery periods, that is not
3 directly related to the activity being compensated on a piece-rate basis.” Lab. Code § 226.2;

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

7 56. Plaintiff Taylor and Class Members paid on a per diem basis consistently worked
8 hours for which they were not paid because Defendant frequently required Plaintiff and the Class
9 Members to work off the clock, including but not limited to spent between visits, travel time to and
10 from visits, documentation/charting time, completing COVID-19 daily attestations, and care
11 coordination time, though Defendant tracked Plaintiff’s time performing each task.

12 57. Plaintiffs are informed and believe that Defendant was aware that Plaintiff and the
13 Class Members were working off the clock and that they should have been paid for this time.

14 58. Defendant’s policy and practice of not paying all minimum wages violates
15 California Labor Code sections 204, 210, 216, 226.2, 558, 1182.12, 1194, 1197, 1197.1, 1198, and
16 the applicable wage order.

17 **SECOND CAUSE OF ACTION**

18 **Failure to Pay Overtime Wages**

19 **(Against All Defendants)**

20 59. Plaintiffs incorporate by reference each and every paragraph above, and realleges
21 each and every allegation contained above as though fully set forth herein.

22 60. During all relevant periods, Defendant required Plaintiffs and the Class Members to
23 work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours
24 per workweek.

25 61. During all relevant periods, both the California Labor Code sections 1194, 1197,
26 510, 1198, and the pertinent wage order required that all work performed by an employee in excess
27 of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of
28 forty (40) hours in any workweek be compensated at one and one-half (1.5) times the employee’s

1 regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to be
2 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
3 any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required to be
4 compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

15 64. AccentCare failed to pay Plaintiffs for all overtime hours worked. Plaintiff Taylor
16 was required to record all hours worked including, but not limited to, travel time to patient visits,
17 in home time with patients, care coordination time, documentation, and meeting time. Despite
18 tracking his hours worked, AccentCare failed to pay Plaintiff Taylor, and upon information and
19 belief the Class Members, overtime wages for all hours in excess 8 hours in a day, 40 hours in a
20 workweek, and/or the first 8 hours on the 7th consecutive day of work.

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

24 66. Defendant also failed to pay Plaintiff and the Class Members two times the regular
25 rate of pay for all double time hours worked in excess of 12 hours in a day or 8 hours on the 7th
26 consecutive day of work.

27 67. As a result, Defendant failed to pay Plaintiff, and the Class Members earned
28 overtime wages, and such employees suffered damages as a result.

1 68. Defendant knew or should have known Plaintiffs, and the Class Members were
2 undercompensated as a result of these practices.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Provide Meal Periods**

5 **(Against All Defendants)**

6 69. Plaintiffs incorporate by reference each and every paragraph above, and realleges
7 each and every allegation contained above as though fully set forth herein.

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

13 71. During the relevant time, Defendant failed to provide Plaintiffs and Class Members
14 timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five
15 hours of a shift.

16 72. As a consequence of Defendant's policies and practices, requirements, demands,
17 coverage and staffing, Plaintiffs and the Class Members were often required to forgo such meal
18 periods, take shortened meal periods, and/or commence their meal periods into and beyond the
19 sixth hour of their shifts.

20 73. Upon information and belief, Plaintiffs and the Class Members were not paid one
21 hour of pay at their regular rate of compensation for each day that a meal period was not lawfully
22 provided, in part, because any such payments failed to include all forms of compensation in the
23 regular rate.

24 74. Moreover, as a matter of policy and practice, upon information and belief, the
25 Aggrieved Employees were also not provided second meal periods on days when shifts exceeded
26 ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal
27 period. On information and belief, Plaintiffs and the Class Members did not waive their rights to a
28 second meal period on shifts in excess of ten hours.

1 75. As a proximate result of the aforementioned violations, Plaintiffs and the Aggrieved
2 Employees have been damaged in an amount according to proof at time of trial.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Authorize and Permit Rest Periods**

5 **(Against All Defendants)**

6 76. Plaintiffs incorporate by reference each and every paragraph above, and realleges
7 each and every allegation contained above as though fully set forth herein.

8 77. Pursuant to the IWC wage orders applicable to Plaintiffs' 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 78. 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 79. Defendant were required to authorize and permit employees such as Plaintiffs and
17 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
18 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
19 with no deduction from wages.

20 80. 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 81. Despite said requirements of the IWC wage orders applicable to Plaintiffs' and Class
27 Members' employment with Defendant, Defendant failed and refused to authorize and permit
28 Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours

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

4 82. Defendant did not pay Plaintiffs 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 Class Members endured similar violations as a result of Defendant's rest period policies and
7 practices and Defendant did not pay said Class Members premium pay as required by law.

8 83. Defendant also failed to separately compensate for rest periods at the proper rate
9 pursuant to Labor Code section 226.2 as a result of Defendant's failure to pay Plaintiffs and the
10 Class Members for all hours worked including non-productive time.

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

18 **FIFTH CAUSE OF ACTION**

19 **Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement**

20 **Provisions**

21 **(Against All Defendants)**

22 85. Plaintiffs incorporate by reference each and every paragraph above, and realleges
23 each and every allegation contained above as though fully set forth herein.

24 86. California Labor Code section 226 provides an employer must furnish employees
25 with an "accurate itemized" statement in writing showing: "(1) gross wages earned, (2) total
26 hours worked by the employee..., (3) the number of piece rate units earned and any applicable
27 piece rate if the employee is paid on a piece-rate basis, (4) all deductions..., (5) net wages earned,
28 (6) the inclusive dates of the period for which the employee is paid, (7) the legal entity that is the

1 employer..., (8) the name and address of the employer, and (9) all applicable hourly rates in
2 effect during the pay period and the corresponding number of hours worked at each hourly rate by
3 the employee...”

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

9 88. Defendant violated Labor Code section 226.2 by failing to provide Plaintiffs and,
10 upon information and belief, other aggrieved employees with itemized accurate wage statements
11 showing, inter alia,: (1) the total hours worked including non-productive time, (2) gross wages
12 earned, (3) net wages earned, (4) all hourly and overtime rates, (5) sick leave hours; (6) total
13 hours of compensable rest and recovery periods, the rate of compensation, and the gross wages
14 paid for those periods under Labor Code section 226.2(a)(2)(A); and (7) total hours of
15 nonproductive time, the rate of compensation, and gross wages paid for that time under Labor
16 Code section 226.2(a)(2)(B). As a result of violations of California Labor Code sections 226(a)
17 and 226.2, AccentCare is liable for civil penalties pursuant to California Labor Code sections
18 226(e), 226.3 and 2698 *et seq.*

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

23 **SIXTH CAUSE OF ACTION**

24 **Failure to Timely Pay Wages Due and Payable During Employment**

25 **(Against All Defendants)**

26 90. Plaintiffs incorporate by reference each and every paragraph above, and realleges
27 each and every allegation contained above as though fully set forth herein.

1 which is less than the IRS mileage rate of \$0.545 in 2018, \$0.58 in 2019, \$0.575 in 2020, and
2 \$0.56 in 2021 from and less than the actual costs incurred by Plaintiff.

3 **EIGHTH CAUSE OF ACTION**

4 **Failure to Pay Wages Owed at Separation**

5 **(Against All Defendants)**

6 98. Plaintiffs incorporate by reference each and every paragraph above, and realleges
7 each and every allegation contained above as though fully set forth herein.

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

10 100. Labor Code section 202(a) states:

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

20 101. Plaintiffs are informed and believe that Defendant willfully failed to timely pay all
21 wages due to Class Members who have separated from their employment with Defendant for work
22 performed including wages for “non-productive” time, rest periods, overtime wages, and premium
23 wages for missed rest periods. As a result, Defendant violated Labor Code sections 201 and 202.

24 **NINTH CAUSE OF ACTION**

25 **Violation of Unfair Competition Law**

26 **(Against All Defendants)**

27 102. Plaintiffs incorporate by reference and reallege each and every allegation contained
28 above, as though fully set forth herein.

103. Defendants' conduct, as alleged in this Complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, Defendants' competitors, and the general public. Plaintiffs also seek to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure section 1021.5.

104. Defendants' policies, activities, and actions as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code sections 17200, *et seq.*

105. A violation of California Business and Professions Code sections 17200, *et seq.*, may be predicated on the violation of any state or federal law.

106. The state law violations, including violations of the relevant IWC Wage Order, detailed herein above are the predicate violations for this cause of action. By way of example only, in the instant case Defendants' policy of failing to lawfully provide Plaintiff with timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was not lawfully provided violates Labor Code sections 512, 226.7, and the IWC Wage Orders. Defendants further violated the law through their policies of failing to fully and accurately compensate Plaintiff for all hours worked, including minimum wages and overtime, and failing to reimburse for necessary expenses, as well as failing to provide accurate itemized wage statement as specified above.

107. Plaintiffs have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

108. Pursuant to California Business and Professions Code sections 17200, *et seq.*, Plaintiffs are entitled to restitution of expenses incurred and the wages withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5; interest; and an award of costs.

TENTH CAUSE OF ACTION

Civil Penalties Under the Private Attorney General Act of 2004, Labor Code § 2698, *et seq.*

(Against All Defendants)

1 109. Plaintiffs incorporate by reference each and every paragraph above, and realleges
2 each and every allegation contained above as though fully set forth herein.

3 110. On November 22, 2021, Plaintiff Taylor gave written notice by online submission
4 to the LWDA and by certified mail to Defendant of Defendant's violations of numerous
5 provisions of the California Labor Code and the IWC Wage Orders. On September 18, 2021,
6 Plaintiff Trujillo also gave written notice by online submission to the LWDA and by certified
7 mail to Defendant of Defendant's violations of numerous provisions of the California Labor Code
8 and the IWC Wage Orders. All fees were paid as required by statute.

9 111. Plaintiffs are "aggrieved employees" as defined in Labor Code section 2699(A), as
10 they were employed by Defendant during the statutory period and suffered one or more of the
11 Labor Code violations set forth herein. Plaintiffs seek to recover for themselves and all other
12 current and former aggrieved employees of Defendant the civil penalties provided by PAGA, plus
13 reasonable attorneys' fees and costs.

14 112. 65 days have passed, and no response has been received from the LWDA.
15 Accordingly, the LWDA has permitted Plaintiffs to proceed in a representative capacity.

16 113. Plaintiffs have exhausted all administrative procedures required of them under the
17 Labor Code sections 2698, 2699, 2699.3, and as a result, are justified as a matter of right in
18 bringing forward this cause of action.

19 114. Pursuant to Labor Code section 2699(a), Plaintiffs seek to recover civil penalties
20 for which Defendant are liable due to numerous Labor Code violations as set forth in this
21 Complaint.

22 115. Plaintiffs seek to recover the PAGA civil penalties through a representative action
23 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
24 4th 969. Class certification of the PAGA claims is not required.

25 116. Pursuant to Labor Code sections 2698, *et seq.*, and 2699(a), Plaintiffs seek to
26 recover civil penalties for which Defendant are liable due to numerous Labor Code and Wage
27 Order violations as set forth in this Complaint.

1 117. Specifically, Plaintiffs, on behalf of themselves and the Aggrieved Employees,
2 seek penalties under Labor Code section 2699, for, without limitation, the claims set forth herein,
3 including:

- 4 a. Defendant's failure to comply with the requirement of Labor Code sections
5 1182.12, 1194, 1197, 1198, and Wage Orders to pay at least minimum wage
6 for every hour worked;
- 7 b. Defendant's failure to comply with the requirement of Labor Code section
8 226.2 to pay at least minimum wage for "non-productive" time;
- 9 c. Defendant's failure to comply with the requirement of Labor Code sections
10 204 and 210, to pay, without condition and within the time set by the
11 applicable article, all wages, or parts thereof;
- 12 d. Defendant's failure to comply with the requirement of Labor Code sections
13 225.5 to pay wages due;
- 14 e. Defendant's failure to comply with the requirement of Labor Code sections
15 201 and 202 to pay wages due to former employees;
- 16 f. Defendant's failure to comply with the requirement of Labor Code section 203
17 to pay waiting time penalties to former employees;
- 18 g. Defendant's failure to comply with the requirement of Labor Code sections
19 226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute
20 rest breaks;
- 21 h. Defendant's failure to comply with the requirement of Labor Code sections
22 226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the
23 regular rate for each statutorily required rest break that was not lawfully
24 authorized and permitted;
- 25 i. Defendant's failure to comply with the requirement of Labor Code section
26 226.2 to separately compensate for rest and recover periods;

- j. Defendant's failure to comply with the requirement of Labor Code sections 226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minutes off duty meal periods;
- k. Defendant's failure to comply with the requirement of Labor Code sections 226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- l. Defendant's failure to provide accurate compliant wage statements under Labor Code section 226;
- m. Defendant's failure to comply with the requirements of Labor Code section 227.3;
- n. Defendant's failure to reimburse necessary expenses in violation of Labor Code section 2802;
- o. Defendant's failure to provide a safe and healthful place of employment in violation of Labor Code section 6300, *et seq*;
- p. Defendant's failure to pay sick leave at the proper rate in violation of Labor Code section 246; and
- q. Defendant's failure to provide a place of employment that is safe and healthful in violation of Labor Code section 6401.

118. Plaintiffs seek civil penalties for Defendant's violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code section 210, for violations of Labor Code section 204, Defendant are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.
- b. Pursuant to Labor Code section 226.3, for violations of Labor Code section 226 (a) Defendant is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period

1 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
2 employee for violations in subsequent pay periods.

3 c. Pursuant to Labor Code section 558(a), “[a]ny employer or other person acting
4 on behalf of an employer who violated, or causes to be violated, a section of
5 this chapter or any provisions regulating hours and days of work in any order
6 of the Industrial Welfare Commission,” including Labor Code sections 510 and
7 512, shall be subject to a civil penalty, in addition to any other penalty
8 provided by law, of fifty dollars (\$50) for initial violations for each underpaid
9 employee for each pay period for which the employee was underpaid and one
10 hundred dollars (\$100) for each subsequent violations for each underpaid
11 employee for each pay period for which the employee was underpaid.

12 d. Pursuant to Labor Code section 1197.1, an employer who pays or causes to be
13 paid to any employee a wage less than the minimum fixed by an order of the
14 commission, shall be subject to a civil penalty as follows: for any initial
15 violation that is intentionally committed, one hundred dollars (\$100) for each
16 underpaid employee for each pay period for which the employee is underpaid;
17 and for each subsequent violation of the same offense, two hundred fifty
18 dollars (\$250) for each underpaid employee for each pay period for which the
19 employee is underpaid regardless of whether the initial violation was
20 intentionally committed.

21 119. Further, as a result of the acts alleged hereinabove, Plaintiffs seek penalties under
22 Labor Code sections 2698 *et seq.* and 2699 because of Defendant’s violation of numerous
23 provisions of the California Labor Code and IWC Wage Orders.

24 120. Under Labor Code section 2699, Plaintiffs and Aggrieved Employees should be
25 awarded twenty-five (25%) of all penalties due under California law, interest, attorneys’ fees and
26 costs.

27 121. Under Labor Code section 2699, the State of California should be awarded
28 seventy-five percent (75%) of the penalties due under California law.

1 **PRAYER FOR RELIEF**

2 **On the First Cause of Action**

3 **(Failure to Pay Minimum Wages)**

- 4 1. For the unpaid balance of the full amount of any minimum wages, and regular wages
5 owed, as well as interest thereon,
- 6 2. Penalties according to statute,
- 7 3. Liquidated damages,
- 8 4. Reasonable attorneys' fees, and costs of suit;
- 9 5. For interest and
- 10 6. For such other and further relief as the Court deems proper.

11 **On the Second Cause of Action**

12 **(Failure to Pay Overtime Wages)**

- 13 1. For the unpaid balance of the full amount of any overtime wages owed, as well as
14 interest thereon,
- 15 2. Penalties according to statute,
- 16 3. Liquidated damages,
- 17 4. Reasonable attorneys' fees, and costs of suit;
- 18 5. For interest and
- 19 6. For such other and further relief as the Court deems proper.

20 **On the Third Cause of Action**

21 **(Failure to Provide Meal Periods)**

- 22 1. For one (1) hour of premium pay for each day in which a required meal period was
23 not lawfully provided;
- 24 2. For reasonable attorneys' fees and costs pursuant to statute; and
- 25 3. For such other and further relief as the Court deems proper.

26 **On the Fourth Cause of Action**

(Failure to Authorize and Permit Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

1. For statutory penalties, including penalties pursuant to Labor Code section 226;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper;

On the Sixth Cause of Action

(Failure to Timely Pay Wages Due and Payable During Employment)

1. For penalties pursuant to Labor Code section 210 and 25% of the amount of wages unlawfully withheld;
2. For interest;
3. For reasonable attorneys' fees and costs pursuant to statute; and
4. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

(Failure to Reimburse Necessary Business Expenses)

1. For unreimbursed sums;
2. For reasonable attorneys' fees and costs pursuant to statute;
3. For interest; and
4. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

(Failure to Timely Pay All Wages Upon Termination)

1. For penalties pursuant to Labor Code section 203;
2. For interest;
3. For reasonable attorneys' fees and costs pursuant to statute; and

1 4. For such other and further relief as the Court deems proper.

2 **On the Ninth Cause of Action**

3 **(Violation of the Unfair Competition Law)**

- 4 1. That Defendant, jointly and/or severally, pay restitution and/or disgorgement of sums
5 to Plaintiffs for the Defendant's past failure to pay minimum, overtime and regular
6 wages, for Defendant's past failure to reimburse necessary expenses, and for premium
7 wages for meal and rest periods that was not provided to Plaintiffs over the last four (4)
8 years in an amount according to proof;
- 9 2. For reasonable attorneys' fees that Plaintiffs are entitled to recover under California
10 Code of Civil Procedure section 1021.5 and Labor Code sections 1194, 1197, 1198 ;
- 11 3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due
12 from the day that such amounts were due;
- 13 4. For costs of suit incurred herein that Plaintiffs are entitled to recover under the Labor
14 Code; and
- 15 5. For such other and further relief as the Court deems proper.

16 **On the Tenth Cause of Action**

17 **(Civil Penalties Under PAGA)**

- 18 1. For penalties according to proof, pursuant to Labor Code sections 2698, *et seq.* for the
19 violations specified above;

2. For penalties under Labor Code sections 210, 266.3, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code sections 218.6, 1194, California Civil Code sections 3287, 3288, and/or any other applicable provisions providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses, and costs under Labor Code sections 1194, 226, 2699, and/or Code of Civil Procedure 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

Dated: March 12, 2025



Malte L.L. Farnaes
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Mitchell J. Murray

Attorneys for Plaintiffs