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County of Yolo,

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JENNIFER BERNSTEIN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YOLO**

JENNIFER BERNSTEIN, an Individual, on
behalf of herself and other aggrieved
employees,

Plaintiff,

vs.

SUMMER HOUSE, INC., a California
Corporation; JULIE A. KIRBY, an
Individual; DAVIS SUMMER HOUSE,
INC., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CV2022-0421

COMPLAINT FOR DAMAGES

[Demand for Jury Trial]

Plaintiff JENNIFER BERNSTEIN, ("Plaintiff") hereby submits the following Complaint against Defendants SUMMER HOUSE, INC. ("SH, INC."), JULIE A. KIRBY ("KIRBY"), and DAVIS SUMMER HOUSE, INC. ("DSH, INC.") and DOES 1 through 50 (collectively the "Defendants") and alleges as follows:

INTRODUCTION

1. Plaintiff was employed from on or about April 2016 to March 2021 as a Direct Support Professional with Defendants SH, INC. and DSH, INC. operating two different residential care facilities in Woodland and Davis, CA, until Plaintiff was retaliated against for reporting what she reasonably believed to be illegal conduct and was transferred to the Supported

1 Living Services Program as a Personal Attendant.

2 2. Specifically, KIRBY, managing agent of Defendants SH, INC. and DSH, INC.
3 has been violating various wage and hour provisions of the California Labor Code in connection
4 with Defendants' collective employment of the Plaintiff, and retaliated against Plaintiff in
5 violation of California Labor Code 1102.5 following Plaintiff's complaint to the Department of
6 Social Services that SH, INC. and DSH, INC. were engaging in unlawful conduct by
7 administering medications to residents contrary to prescription. SH, INC. and DSH, INC. were
8 subsequently cited by the Department of Social Services as a result of Plaintiff's complaint, and
9 Plaintiff was transferred to a less desirable position outside of the group home environment,
10 which caused her distress, damages and hardship.

11 3. As a result, Plaintiff seeks damages available to her on an individual basis under,
12 *inter alia*, the California Labor Code (including various statutory penalties) as well as
13 compensatory damages, punitive damages, attorney's fees and costs against Defendants.
14 Plaintiff also seeks civil penalties on a representative PAGA basis based on California Labor
15 Code §2699, et seq.

16 **IDENTIFICATION OF ALL PARTIES**

17 4. Plaintiff JENNIFER BERNSTEIN was at all relevant times herein an individual
18 residing in Yolo County, California.

19 5. Defendant SUMMER HOUSE, INC., is, and at all relevant times was, a California
20 Corporation, established in 1974, and assigned Corporate ID Number C0725467, with its
21 principal place of business in Woodland, California. Plaintiff has been SH, INC.'s employee
22 since 2016.

23 6. Defendant JULIE A. KIRBY, is, and at all relevant times was, an Individual
24 residing in Yolo County, California, and the Executive Director of SH, INC.. KIRBY is
25 personally liable for certain individual California Labor Code violations by and through
26 California Labor Code §558.1. KIRBY is also personally liable for specified PAGA violations
27 pursuant to the language of the Private Attorneys General Act of 2004, California Labor Code
28 section 2698, et seq.

7. Defendant DAVIS SUMMER HOUSE, INC. is, and at all relevant times was, a
California Corporation, established in 1990, and assigned Corporate ID Number C1657881, with

1 its principal place of business in Davis, California. Plaintiff has been DSH, INC.'s employee
2 since 2016.

3 8. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
4 DOES 1 through 50, and therefore sues these defendants by such fictitious names and capacities
5 until ascertained.

6 9. Plaintiff is informed and believes and, on that basis, alleges that each fictitiously
7 named defendant is responsible in some manner for the occurrences herein alleged and that
8 Plaintiff's injuries as herein alleged were proximately caused by the conduct of such defendants.

9 10. Plaintiff is informed and believes and thereupon alleges that at all times material
10 herein, each of the Defendants were the agent, employee and/or were working in concert with
11 their co-defendants and were acting within the course and scope of such agency, employment
12 and/or concerted activity.

13 11. To the extent that certain acts and omissions were perpetrated by certain
14 defendants, the remaining defendant or defendants confirmed and ratified said acts and
15 omissions.

16 12. Plaintiff is informed and believes and thereupon alleges that at all times material
17 herein, each defendant was completely dominated and controlled by his co-defendant and each
18 was the alter ego of the other.

19 13. Whenever and wherever reference is made to individuals, who are not named as
20 Plaintiff or defendant(s) in this complaint but were employees/agents of each defendant, such
21 individuals at all relevant times acted on behalf of each defendant within the scope of their
22 employment.

23 14. At all times relevant, each defendant was the employer, joint employer, alter ego
24 and/or managing agent of each of the co-defendants.

25 **VENUE AND JURISDICTION**

26 15. Venue is proper in the County of Yolo because the work performed by Plaintiff
27 and incidents forming the basis of this complaint occurred in Yolo County, California.

28 16. This Court has jurisdiction over the present matter because, as delineated within
this complaint, the nature of the claims and the amount in controversy meet the requirements for

jurisdiction in Yolo County Superior Court.

17. This Court also has personal jurisdiction over the Defendants as Defendants all reside in Yolo County, California.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. Plaintiff has complied with the PAGA notice provision outlined in Cal. *Lab. Code* Section 2699.3(a)(1) by electronically submitting her written Notice on December 17, 2022 to the Labor and Workforce Development Agency (LWDA), and by certified mail to the Defendants of the specific provisions of this code alleged to have been violated. The LWDA provided an identification number of LWDA-CM-858253-21 but has not provided Plaintiff with notice that it intends to investigate these violations. Therefore, since over 65 calendar days have elapsed since the postmark date of Plaintiff's notice, Plaintiff is entitled to commence this action under Cal. *Lab. Code* § 2699.3(a)(2)(A).

19. Plaintiff requests damages and penalties against the Defendants as provided under Cal. *Lab. Code* section 2699(f), plus reasonable attorney's fees and costs, in an amount to be proven at trial.

FACTUAL ALLEGATIONS

20. Plaintiff is an accomplished caretaker with almost six years of service working for Defendants, beginning in April of 2016.

21. Initially, Plaintiff was hired as a Direct Support Professional in SH, INC.'s Davis Summer House Residential Care Facility ("Group Home"), which was walking distance from her residence. Ms. Bernstein was regularly scheduled for an average of 33.5 hours, five days a week, and paid \$10/hr.

22. As a Direct Support Professional, Plaintiff helped residents complete basic tasks/skills of daily living, transported residents to appointments or other social outings, kept residents safe from potential health hazards in their surrounding environment, and assisted residents with the administration of medications.

23. Working 33.5 hours a week was necessary to maintain the panoply of benefits afforded to full time employees of the Defendants.

1 24. As time went on, Plaintiff came to love her job at the Group Home. Plaintiff had
2 a close working relationship with many of her coworkers, and with all of the residents she
3 worked with.

4 25. Plaintiff performed her job well, as reflected by her supervisors' requests for
5 Plaintiff to assist with administrative and managerial tasks, for which sometimes they would pay
6 her extra for.

7 26. Plaintiff also consistently received positive performance reviews and
8 commensurate raises every year of her employment, up to an including February 3, 2021, when
9 Plaintiff's direct supervisor, Maira Gurrola, administered Plaintiff's quarterly review.

10 27. Shortly thereafter, however, Plaintiff brought up an improper administration of
11 medication issue to Jaelyn Singleton, who had just been hired by the Defendants to the advocate
12 position. Specifically, Plaintiff had identified a problem with Ms. Singleton's administration of
13 medication to a resident, and she did not respond well. Ms. Singleton overrode Plaintiffs'
14 concerns, insisted she was correct in her administration of the medication for this resident, and
15 subsequently went to Ms. Gurrola and claimed Plaintiff was "undermining her authority." That
16 resident ended up in the emergency room for diarrhea and vomiting and was prescribed a PRN
(take as needed prescription) for nausea as a result.

17 28. On February 16, 2021, SH, INC. / DSH, INC. had a staff meeting via Zoom where
18 another Direct Support Professional, Perrin Swanlund, mentioned the PRN procedures were not
19 being followed correctly, either. Ms. Singleton, backed by Ms. Gurrola, became very defensive
20 when this was brought up during the meeting. It was common practice to record these meetings
21 to convey what was happening to staff members who could not be present for them. However,
22 Ms. Gurrola later claimed that as she was saving and downloading this recorded meeting, her
23 laptop died and did not save it, which conveniently dispensed of evidence relating to said
24 complaint.

25 29. On or about February 18, 2021, Plaintiff disclosed to her supervisor, Ms. Gurrola,
26 that medication policies and procedures were not being followed correctly which was a health
27 and safety risk to the residents she and her co-workers cared for. In so doing, Plaintiff provided
28 Ms. Gurrola with three examples and her notes to assist in rectifying the issues.

1 30. On February 23, 2021 at 8:17am, Plaintiff noticed the same issues were still
2 occurring, so she emailed the Executive Director of SH, INC. and DSH, INC., KIRBY, stating:

3 *“I’ve noticed several instances in the last week of*
4 *med policies and procedures not being followed*
5 *as DSH, and I am concerned that if this isn’t*
6 *dealt with right away a resident might get hurt.*
7 *We have some residents with medications that*
8 *can be dangerous if not administered correctly.”*

9 31. KIRBY responded at 8:25am asking Plaintiff, “Have you brought this to Maira’s
10 attention?”

11 32. Plaintiff replied at 8:34am, “I did bring it to Maira’s attention on Friday, but all I
12 have seen done is a med error covered up in the med log with construction paper. There are still
13 other errors that haven’t been addressed...”

14 33. Plaintiff received an email from Ms. Gurrola thereafter at 1:52pm, stating that she
15 had reviewed Plaintiff’s notes carefully, and that Ms. Singleton would be retrained on certain
16 medication procedures.

17 34. Plaintiff sent a responsive email to Ms. Gurrola at 2:19pm, thanking her, and
18 providing further instruction about medication administration for a particular resident.

19 35. In a responsive email sent at 2:25pm, Ms. Gurrola assured Plaintiff she would do
20 as Plaintiff asked, and that she would be auditing the medication administration in the future,
21 “given the seriousness.”

22 36. Plaintiff responded at 2:32pm, again thanking Ms. Gurrola, stating, “that makes
23 me feel a lot better. Let me know [if] you need any help with anything.”

24 37. Later that same day, however, around 3:22pm, Plaintiff was informed by a co-
25 worker that her supervisor, Ms. Gurrola, and the other manager responsible for medications, Ms.
26 Singleton, were complaining about Plaintiff in the office loudly, falsely stating that Plaintiff did
27 not come to them directly with her concerns, that Plaintiff’s complaints were personal, and that
28 Plaintiff went to KIRBY because she wanted to get them in trouble.

 38. Plaintiff emailed KIRBY again at 3:38pm, letting her know how management had
been reacting inappropriately to her reporting, and reiterated that she only reached out to KIRBY
to protect the health and safety of the residents.

1 39. At 5:23pm, Ms. Gurrola (after having been spoken to by KIRBY) thanked
2 Plaintiff, stating, “Your feedback helped us learn how to better review and prepare for
3 medication changes that happen...”

4 40. On February 24, 2021, KIRBY came to the DSH, INC. facility to speak with
5 Plaintiff and asked Plaintiff what she would do if the medication errors weren’t resolved.
6 Plaintiff reminded KIRBY that as a mandated reporter, she would be required by law to report
7 to the Department of Social Services. KIRBY responded that this would hurt SH, INC. and DSH,
8 INC.

9 41. On February 25, 2021, KIRBY sent Plaintiff an email downplaying the severity
10 of the issues Plaintiff had reported, fashioning the incident as an example of Plaintiff not
11 exercising a “team approach,” and communicating a thinly veiled threat to the Plaintiff that she
12 would have to otherwise have engage in, “a discussion about whether the team environment is
13 really the best fit” for the Plaintiff if she did not “work collaboratively” with everyone.

14 42. On February 27, 2021, Plaintiff sent KIRBY a responsive email stating,
15 *“For my own personal growth, can I ask what I*
16 *should have done differently in this situation?*
17 *The med issues were brought up with Jaelyn*
18 *directly during the staff meeting and then I*
19 *brought them up again with Maira before then*
20 *going to you.”*

21 43. KIRBY never responded to Plaintiff’s email of February 27, 2021.

22 44. Plaintiff continued to work for two weeks but on March 12, 2021, Plaintiff
23 observed that the medication errors were still not resolved and seemed to be getting worse.
24 Given that Plaintiff’s complaints were not being thoroughly investigated and/or remedied,
25 Plaintiff called the Department of Social Services (“DSS”) and filed a complaint.

26 45. On March 22, 2021, KIRBY was notified of the complaint filed against DSH,
27 INC., unbeknownst to Plaintiff.

28 46. On March 25, 2021, KIRBY came to the Group Home just before Plaintiff was
about to end her shift, and indicated that she wanted to meet with Plaintiff in the office of
Human Resources. Plaintiff complied and followed KIRBY into the office, where KIRBY sat
Plaintiff down with the Human Resources Manager present. KIRBY verbally conveyed that

1 she was being “offered” a transfer Plaintiff out of the DSH, INC. Group Home and into SH,
2 INC.’s Supported Living Services (“SLS”) Program, citing issues with her team members. The
3 transfer letter, given to the Plaintiff while KIRBY was speaking to her, just before Plaintiff
4 was also set to leave on her first vacation in several years, forced Plaintiff to accept the transfer
5 or be effectively terminated from employment with DSH, INC. / SH, INC.

6 47. Plaintiff asked KIRBY if her choices were to transfer or be let go. KIRBY stated
7 they wouldn't be letting Plaintiff go, but rather, that Plaintiff “would be declining work.”
8 Plaintiff stated that she did not want to work for SLS, and that she liked her job at the Group
9 Home. KIRBY stated Plaintiff should read over the entire offer and think about it. Plaintiff
10 said okay and left because she was too upset to keep sitting across from KIRBY.

11 48. Plaintiff walked out of the office, told two staff members that she had just been
12 transferred, and that she needed to leave. Plaintiff left the Group Home crying.

13 49. In shock at what had transpired, Plaintiff called DSS to find out if KIRBY had
14 been made aware of her complaint. DSS investigator, Farhaan Sarangi, confirmed that KIRBY
15 was informed through his call to KIRBY on March 22, 2021, which informed Plaintiff as to the
16 motivation behind her transfer.

17 50. At the time of transfer, Plaintiff had been making approximately \$16.33/hr at the
18 Group Home and was one month away from her step increase.

19 51. KIRBY, the author of Plaintiff’s transfer letter, falsely stated that Plaintiff’s job
20 responsibilities would not change and that the SLS Program has a minimum of 32 hours to
21 offer the Plaintiff, depending on her “willingness and availability.” KIRBY also cited
22 Plaintiff’s protected reporting activities as evidence of Plaintiff having alleged conflicts with
23 her coworkers which pretextually motivated her transfer – the same ones that Plaintiff
24 identified as having mishandled the administration of residents’ medication.

25 52. Plaintiff was not interested in working in SLS because it requires hands-on
26 hygiene and lifting of clients requiring one-on-one care. Plaintiff did not want to be exposed at
27 every shift to feces, urine, menstrual blood, saliva, or experience the body aches and pains that
28 come with doing wheelchair transfers almost daily. Plaintiff did not experience those things in
the Group Home on a regular basis. Plaintiff would also no longer be able to walk to work, or

1 retain the schedule it took her three years to get, which was Sunday 4pm-9pm, Monday
2 overnight (9pm-8am), and Wednesday 2pm-9pm and Thursday overnight (9pm-8am).

3 53. The SLS position would also require driving between client homes in different
4 towns and driving clients long distances sometimes for groceries out of town, when Plaintiff
5 does not like to drive. Plaintiff did not want to use her personal vehicle for work regardless of
6 whether Defendants paid more mileage or not.

7 54. Plaintiff was forced to cancel her vacation at a remote cabin because she now
8 had to figure out what to do for work and needed internet access in order to do that. Plaintiff
9 entertained the prospect of applying to other jobs, but because she had been with Summer
10 House for so long, she would have taken a big pay cut starting somewhere new. Plaintiff did
11 apply to a few jobs in other fields, but she was so depressed that she wasn't able to follow
12 through. Plaintiff agreed to take the position KIRBY offered out of necessity because she knew
13 she couldn't afford to not work.

14 55. On March 30, 2021, after Plaintiff investigated her decision a bit further, she
15 emailed KIRBY stating, "I'm looking at the schedule and can't find any way to get the same
16 amount of hours I'm working now. I can't find any way to get more than 28 hours so it looks
17 like the reassignment is going to cost me my health insurance. Are these the only open hours?"

18 56. KIRBY replied that she could with some "creative arrangements." KIRBY
19 stated that because SLS had a different wage order than DSH, she could work more than 8
20 hours in a day to get enough hours. In other words, in order to keep Plaintiff's health insurance
21 and get the same amount of work, she would be forced to work overtime. KIRBY falsely
22 stated, however, that because of the different wage order, Plaintiff wouldn't get paid overtime
23 unless she worked more than 40 hours a week instead of over 8 hours in a day.

24 57. Plaintiff picked a schedule that had her working three (3), twelve (12) hour days
25 in a week. Plaintiff reluctantly conveyed to KIRBY that she would be open to working a less
26 desirable schedule in the hope that more desirable shifts would open up for Plaintiff in the
27 future - out of necessity because she needed the work. Plaintiff also let KIRBY know she was
28 broken hearted about leaving the clients at the Group Home.

58. On March 31, 2021, Plaintiff asked if she could go say goodbye to the residents

1 she had bonded with for five (5) years. Specifically, Plaintiff emailed KIRBY to ask if “it
2 would be okay for me to visit the residents at DHS to let them know I am transferring. I had
3 promised them I’d give them Easter themed manicures and was thinking maybe I could
4 volunteer a few hours Sunday night to do that and say goodbye.” KIRBY replied, “Of course
5 you should say good-bye to the residents... I would just make sure that you stay mindful of
6 boundaries and don’t say anything overly personal or upsetting to them.”

7 59. In other words, KIRBY did not want Plaintiff to communicate that her transfer
8 was forced to the residents or disclose that it was in response to complaining about conduct
9 which was endangering their health and safety. Plaintiff also had to say her good-byes during
10 her vacation.

11 60. On April 8, 2021, Plaintiff emailed KIRBY the signed letter accepting the
12 transfer but stating,

13 *“I also want to reiterate that I was happier with my*
14 *position and schedule at Davis Summer House, and*
15 *I would like to be transferred back someday if it is*
16 *an option. I’m confident that if you ask the residents*
17 *and the staff that I have worked with the most you*
18 *will find that they also want me back. While I intend*
19 *to work hard as a personal attendant it is a less*
20 *desirable position for me.”*

21 61. On April 9, 2021, at 9:41AM, KIRBY sent Plaintiff a responsive email stating,
22 *“Our policy on transfers is that we ask people to*
23 *remain in their position for 3 months, prior to*
24 *requesting a transfer. We do this so that employees*
25 *may thoroughly learn the position and give it a*
26 *chance before switching to other programs. Having*
27 *said that, and as you are aware, you were reassigned*
28 *due to the reasons clearly outlined in your transfer*
letter...”

62. On April 9, 2021 at 10:00AM, Plaintiff responded to KIRBY’s email asking if
she and KIRBY could meet in person because the reasons for the transfer were not clear to
Plaintiff.

63. On April 9, 2021 at 12.48 PM, KIRBY declined the in person meeting claiming
she was swamped, then stated, “I believe that the reasons for the transfer were clearly defined
in the letter. I would recommend that you review it to gain clarity.”

1 64. On April 12, 2021, Plaintiff received a “welcome” letter formalizing her transfer
2 to SH, INC.’s SLS program as a Personal Attendant.

3 65. On April 20, 2021, Plaintiff provided DSS Investigator Sarangi a timeline of the
4 medication mismanagement that concerned her enough to report to licensing, per his request
5 on April 19, 2021.

6 66. As Plaintiff suspected, scheduling in the SLS Personal Attendant position to
7 which Plaintiff was involuntarily transferred was incredibly difficult. Soon after Plaintiff
8 started, one of her clients was moved into skilled nursing temporarily, but she was not sure
9 how long he would be there. This meant Plaintiff was down eighteen (18) hours a week for an
10 indefinite period of time, demonstrating the instability of the position. Plaintiff had to start
11 interviewing with other clients and training in their homes to make up the hours with no set
12 schedule. If Plaintiff wanted to maintain at least thirty (30) hours a week, she basically had to
13 be on call in the hope that other staff would call out sick so she could cover their shifts.

14 67. Scheduling difficulties and duty changes became a major stressor in the job –
15 During Plaintiff’s first eight (8) months in the SLS program, she worked with a client who
16 required body-to-body wheelchair transfers which Plaintiff was never formally trained on.
17 Plaintiff developed back pain for which she is now receiving physical therapy. Plaintiff has
18 been assisting clients with toileting and using bedpans, so she is exposed to urine, feces, and
19 menstrual blood on a regular basis. Plaintiff was also supporting a client with eating, so she
20 was exposed to saliva as well. Personal Attendants were not given proper equipment with deal
21 with their clients either. By way of example, they didn’t always have the right sized gloves in
22 the homes so sometimes she would have to perform these tasks with gloves that were too big.

23 68. Further, since there is no central physical hub for SLS, and Personal Attendants
24 work only in client homes, communication done via text messages on their personal cell
25 phones. This makes it so even on Plaintiff’s days off, her cell phone gets swarmed with
26 updates, questions and shift requests pertaining to clients. Personal Attendants, including the
27 Plaintiff, are pressured to respond to acknowledge receipt of the messages even when they are
28 not on shift or off the clock. Personal Attendants are required to use their personal cell phones
for clocking in and out of shifts, and updating client notes, but do not receive a cell phone

1 stipend.

2 69. Personal Attendants including the Plaintiff are also required to use their personal
3 vehicles for transporting clients. Plaintiff had one client who had a fecal accident in her car,
4 demonstrating the inconvenience of the requirement in another way.

5 70. While Plaintiff obviously enjoys working with and supporting people, the reality
6 is that the SLS Personal Attendant position is a dirtier and more stressful job that she was
7 involuntarily transferred to in retaliation for engaging in protected activities.

8 71. On May 7th, Plaintiff attended a doctor's appointment and was diagnosed with
9 work-related anxiety attack as a result of her transfer and the stress of her new position.

10 72. On or about May 13, 2021, Plaintiff asked if she could visit the residents in the
11 facility as they had been asking about Plaintiff and she had been missing them. Residents had
12 been giving co-workers still at the Group Home pictures they had colored for the Plaintiff.
13 Also, two of the residents had found Plaintiff and messaged her on Facebook. KIRBY denied
14 Plaintiff's requests to visit the Group Home residents and would not provide a reason why,
15 stating instead that it was "private and confidential."

16 73. Plaintiff's complaint was substantiated on June 24, 2021 by DSS Investigator
17 Sarengi. SH, INC. received a Type A citation, which is the most serious type of citation and
18 only given when the residents' health and safety are at an immediate risk. As a result, SH,
19 INC. was required to retrain all managers on medication policies and procedures.

20 74. Since being transferred, Plaintiff has struggled to find a stable schedule that
21 works for her, and is always in danger of losing her health insurance because her hours are not
22 guaranteed and constantly in flux. Plaintiff is also subjected to her hours being reclassified at
23 any time without notice to a lower wage classification for doing the exact same work. Even
24 now that Plaintiff has more regular shifts, there is still always the possibility that schedules will
25 suddenly change. Plaintiff is also working some shifts that only pay minimum wage because
26 the SLS program allegedly has dual employment with IHSS, which only pays minimum wage.

27 75. Because Plaintiff now works one-on-one in client homes, she does not have any
28 time to rest away from the client during shifts, and the shifts are very long and exhausting.
Plaintiff has been verbally abused by clients, and her mental and physical health has continued

1 to deteriorate. Plaintiff has complained about numerous wage and hour issues in this position,
2 and has further been denied advancement opportunities for pretextual reasons even though she
3 is qualified for the management positions that open up in Defendants' employ.

4 **FIRST CAUSE OF ACTION**

5 **Violation of California *Labor Code* § 1102.5**

6 **[Against SH, INC. and DSH, INC.]**

7 76. Plaintiff incorporates by reference and realleges all previous paragraphs,
8 inclusive, as though set forth fully herein.

9 77. California Labor Code § 1102.5(b) prohibits an employer, or someone acting on
10 behalf of the employer, from discharging or retaliating against an employee for disclosing
11 information, or because the employer believes that the employee disclosed or may disclose
12 information, to a government or law enforcement agency, to a person with authority over the
13 employee or another employee who has the authority to investigate, discover, or correct the
14 violation or noncompliance if the employee has reasonable cause to believe that the information
15 discloses a violation of state or federal statute, or a violation of or noncompliance with a local,
16 state, or federal rule or regulation.

17 78. On or about February 19, 2021, Plaintiff disclosed to SH, INC. and DSH, INC.
18 personnel with authority over Plaintiff and with authority to investigate, discover or correct the
19 violation or noncompliance that medication policies and procedures were not being followed
20 correctly which was a health and safety risk to the residents she and her co-workers cared for.

21 79. Plaintiff also filed a complaint with the Department of Social Services ("DSS"),
22 a government licensing agency, that medication policies and procedures were not being followed
23 correctly which was a health and safety risk to the residents she and her co-workers cared for,
24 after her complaints to SH, INC. and DSH, INC. personnel were not properly addressed and/or
25 remedied.

26 80. Three days after KIRBY was notified that Plaintiff had disclosed what she
27 reasonably believed were unlawful activities occurring at the Group Home to DSS, Plaintiff was
28 informed that she was being transferred to the less desirable position of Personal Attendant, with
inferior scheduling, location, privileges, benefit stability and job duties.

1 81. KIRBY articulated the pretextual reason for Plaintiff's transfer was because of
2 conflict with team members.

3 82. Yet the only team members that had conflict with Plaintiff were those that Plaintiff
4 identified as having not followed medication policies and procedures correctly or the supervisors
5 she complained to about the same who did nothing about it.

6 83. Plaintiff has been harmed as a result of this adverse employment action.

7 84. Defendants' conduct was a substantial factor in causing Plaintiff harm.

8 85. As a result, Plaintiff is entitled to all statutory penalties provided for by law,
9 interest, attorney's fees, costs, compensatory damages, and all other remedies in an amount to
10 be proven at trial.

11 **SECOND CAUSE OF ACTION**

12 **Violation of California Labor Code § 98.6**

13 **[Against SH, INC. and DSH, INC.]**

14 86. Plaintiff incorporates by reference and realleges all previous paragraphs,
15 inclusive, as though set forth fully herein.

16 87. California Labor Code section 98.6 prohibits employers from retaliating or taking
17 adverse actions against any employee because the employee engaged in any exercise of rights
18 afforded by the California Labor Code.

19 88. Plaintiff set forth multiple wage and hour complaints with her supervisors after
20 being transferred to the position of Personal Attendant in the SLS Program, engaging in
21 protected activities under this section.

22 89. Plaintiff was retaliated against and suffered adverse employment actions
23 including but not limited to failure to promote or be considered for promoted for engaging in
24 protected activities under this section.

25 90. Plaintiff has been harmed as a result of this adverse employment action.

26 91. Defendants' conduct was a substantial factor in causing Plaintiff harm.

27 92. As a result, Plaintiff is entitled to all statutory penalties provided for by law,
28 interest, attorney's fees, costs, compensatory damages, and all other remedies in an amount to
be proven at trial.

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1 Code Section 226(a) and the employee cannot promptly and easily determine from the wage
2 statement alone the amount of the gross wages or net wages paid to the employee during the
3 pay period or any of the other information required to be provided on the itemized wage
4 statement pursuant to items (2) to (4), inclusive, (6), and (9) of Labor Code Section 226(a).

5 98. Defendants did not provide Plaintiff with an itemized wage statement that
6 complied with Labor Code section 226(a) insofar as it failed to reflect all hours worked at the
7 proper rates of pay. Further, Plaintiff's sick hours and vacation hours are not reflected on her
8 paystubs, and when she uses sick hours, for example, it improperly reflects on Plaintiff's
9 paystub as hours worked instead of sick pay. This makes it difficult for Plaintiff to keep track
10 of how many sick/vacation hours she has at any given time, and impossible to make sure she is
11 accruing them at the correct rate.

12 99. Plaintiff has been injured as a result of Defendants having provided her with
13 improper wage statements.

14 100. In addition, Plaintiff was forced to retain attorneys to pursue her claim for
15 damages stemming from Defendants having failed to provide her proper itemized wage
16 statements and is entitled to attorney's fees under the California Labor Code as a result.

17 **FOURTH CAUSE OF ACTION**

18 **Violation of California *Labor Code* § 226.7**

19 **[Against All Defendants]**

20 101. Plaintiff incorporates by reference and realleges all previous paragraphs,
21 inclusive, as though set forth fully herein.

22 102. California *Labor Code* § 226.7 states, in pertinent part, that an employer shall not
23 require an employee to work during a meal or rest period mandated pursuant to statute or order
24 of the Industrial Welfare Commission.

25 103. Plaintiff alleges Defendants did not provide meal breaks or rest breaks to Plaintiff,
26 and instead encouraged Plaintiff to work through her meal and rest breaks or denied her an
27 opportunity to take meal and rest breaks in direct violation of § 226.7.

28 104. Plaintiff alleges she never waived her right to a meal break.

105. Plaintiff alleges she never waived her right to a rest break.

106. Plaintiff alleges she never executed an on-duty meal period agreement.

107. As a result, Plaintiff is entitled to these statutory penalties provided for by law, interest, attorneys' fees, costs, compensatory damages, and other remedies in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

Violation of Industrial Welfare Commission Wage Orders 1-15, Section 4

[Against SH, INC. and DSH, INC.]

108. Plaintiff incorporates by reference and realleges all previous paragraphs, inclusive, as though set forth fully herein.

109. Industrial Welfare Commission Wage Orders 1-15, Section 4 require that when an employee works a split shift, one (1) hour's pay shall be paid in addition to the wages for that workday.

110. Plaintiff has worked split shifts requiring travel from two different locations, but has not received split shift premiums to which she is otherwise entitled.

111. As a result, Plaintiff is entitled to these premiums provided for by law, and other remedies in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

Violation of California *Labor Code* § 1194

[Against All Defendants]

112. Plaintiff incorporates by reference and realleges all previous paragraphs, inclusive, as though set forth fully herein.

113. California *Labor Code* § 1194 states, in pertinent part, that 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.

114. California *Labor Code* § 510 provides, in pertinent part, that an employer must pay an employee at a rate of one and one-half times the regular rate of pay for any employee

1 who works more than eight hours in one workday (and double time for all hours worked over 12
2 in one day) and forty hours in one workweek.

3 115. Plaintiff alleges Defendants failed to pay one-and-one-half-time the regular rate
4 of pay for all hours Plaintiff worked over eight hours in a workday or forty hours in a workweek,
5 and double time for all hours worked over 12 on a workday, in direct violation of California
6 *Labor Code* § 510.

7 116. California Labor Code §515(c) states, in pertinent part, “the Industrial Welfare
8 Commission may establish exemptions from the requirement that an overtime rate of
9 compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and
10 professional employees, if the employee is primarily engaged in the duties that meet the test of
11 the exemption, customarily and regularly exercises discretion and independent judgment in
12 performing those duties, and earns a monthly salary equivalent to no less than two times the state
13 minimum wage for full-time employment.”

14 117. Plaintiff further alleges that Defendants misclassified her as exempt from
15 overtime pay, in direct violation of California *Labor Code* §510.

16 118. As a result, Plaintiff is entitled to those unpaid wages, any statutory penalties
17 provided for by law, interest, attorneys’ fees, costs, compensatory damages, and other remedies
18 in an amount to be proven at trial, including, but not limited to liquidated damages pursuant to
19 California *Labor Code* § 1194.2.

20 **SEVENTH CAUSE OF ACTION**

21 **Violation of California *Labor Code* § 2802**

22 **[Against All Defendants]**

23 119. Plaintiff incorporates by reference and realleges all previous paragraphs,
24 inclusive, as though set forth fully herein.

25 120. California *Labor Code* § 2802 requires, in pertinent part, that an employer
26 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
27 in direct consequence of the discharge of her duties.

28 121. Plaintiff alleges that Defendants failed to indemnify her for all expenditures and
losses including but not limited to covid testing, mileage to and from different work locations in

1 the same day, personal cell phone usage, etc., incurred as a direct consequence of the discharge
2 of her duties, in direct violation of California *Labor Code* § 2802.

3 122. As a result, Plaintiff is entitled to these statutory or civil penalties provided for by
4 law, interest, attorneys' fees, costs, compensatory damages, and other remedies in an amount to
5 be proven at trial.

6 **EIGHTH CAUSE OF ACTION**

7 **Violation of *Business and Professions Code* § 17200**

8 **[Against SH, INC. and DSH, INC.]**

9 123. The allegations set forth in this complaint are hereby re-alleged and incorporated
10 by reference.

11 124. Defendant is a "person" as defined under *Business and Professions Code* § 17021.

12 125. Plaintiff is informed and believes and based thereon alleges that Defendants
13 committed unfair business practices, as defined by Cal. *Bus. & Prof. Code* § 17200, *et seq.*, by
14 violating laws alleged to have been violated in this Complaint and which allegations are
15 incorporated herein by reference and include, but are not limited to:

- 16 a. Defendants failed to provide meal and rest breaks;
- 17 b. Defendants failed to pay wages due and owing, including overtime compensation;
- 18 c. Defendants failed to reimburse business expenses necessarily incurred in the
19 performance of Plaintiff's job duties; and
- 20 d. Defendants failed to provide accurate and itemized wage and payroll statements.

21 126. The practices described above are unfair within the meaning of Cal. *Bus. & Prof.*
22 *Code* § 17200, *et seq.*, because the acts were intentionally performed for the purpose of harming
23 Plaintiff.

24 127. Further, such skirting of the California labor laws presents a threat to the general
25 public in that the enforcement of the labor laws is essential to ensure that all California employers
26 compete equally and that no California employer receives an unfair competitive advantage at the
27 expense of its employees.

28 128. As a direct and legal result of the Defendant's actions against her, Plaintiff has
been harmed because she has suffered, in an amount to be determined according to proof at trial.

129. As a result, Plaintiff requests that she be awarded restitution in an amount to be proven at trial.

130. As a direct and proximate result of the aforesaid acts and conduct of said Defendant, Plaintiff is entitled to and hereby seek attorneys' fees as permitted by law and as provided for by § 1021.5 of the California Code of Civil Procedure. For Defendant's misconduct as alleged herein, Plaintiff seeks injunctive relief to stop practice and pay a professional for employment audit, as well as attorney's fees and costs in an amount to be proven at trial.

NINTH CAUSE OF ACTION

Violation of California Labor Code Section 2699 et seq. against all Defendants

131. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through 91 above, as though each such Paragraph were fully set forth herein.

132. Plaintiff brings this cause of action as a representative action on behalf of herself and aggrieved employees in the capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. (“PAGA”).

133. PAGA specifically provides for a private right of action to recover civil penalties for violations of the Labor Code pursuant to California Labor Code Section 2699(a).

134. Defendants violated various provisions of the California Labor Code as to the Plaintiff and other non-exempt employees. Plaintiff and the other non-exempt employees are therefore “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants and one or more of the alleged violations were committed against them.

135. During all times relevant to this cause of action, Defendants have routinely subjected Plaintiff and the other aggrieved employees to violations of various sections of the California Labor Code by:

a. Failing to timely pay all wages due to Aggrieved Employees whose employment with Defendants ended. California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her

1 wages shall become due and payable not later than seventy-two (72) hours thereafter, unless
2 the employee has given seventy-two (72) or more hours' notice of his or her intention to quit,
3 in which case the employee is entitled to his or her wages at the time of quitting. Defendants
4 failed to pay the Aggrieved Employees all wages due to them within the time period specified
5 by California Labor Code sections 201 and 202 upon the termination of their employment and
6 paid wages late to aggrieved employees. Defendants also failed to pay aggrieved employees
7 the waiting time penalty upon the late payment of wages.

8 b. Failing to pay Plaintiff and the aggrieved employees all earned
9 compensation. Specifically, Defendants required Plaintiff and the aggrieved employees to
10 perform work off the clock, during meal periods and/or during their rest periods and failed to
11 compensate the aggrieved employees for this work time.

12 c. Failing to pay Plaintiff and the aggrieved employees overtime and double
13 time compensation owed. California Labor Code sections 510 and 1198 require employers to
14 pay overtime at time-and-a-half or double time when an employee works more than 8 hours in
15 a day (or 12 in a day for double time hours) or more than 40 hours in a week and to include all
16 non-discretionary earnings in the regular rate of pay calculation when determining the overtime
17 rate. Defendants failed to properly compensate Plaintiff and the aggrieved employees for all
18 overtime hours worked, including but not limited to (i) having employees work off-the-clock
19 and (ii) not paying overtime/double time compensation at the appropriate overtime/double time
20 rates required by California law.

21 d. Failing to provide meal and rest periods to which Plaintiff and the
22 aggrieved employees are entitled and failing to pay meal and rest period premiums. California
23 Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour
24 of pay at the employee's regular rate of pay for each meal or rest period that is not provided.
25 Defendants failed to compensate Plaintiff and the aggrieved employees properly for non-
26 compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal
27 and rest periods.

28 e. Failing to pay all wages due to Plaintiffs and the aggrieved employees

1 during regular pay periods. California Labor Code section 204 requires that all wages earned
2 by any person in any employment between the 1st and 15th days, inclusive, of any calendar
3 month, other than those wages due upon termination of an employee, are due and payable
4 between the 16th and the 26th of the month during which the labor was performed, and that all
5 wages earned by any person in any employment between the 17th and the last day, inclusive, of
6 any calendar month, other than those wages due upon termination of an employee, are due and
7 payable between the 1st and the 10th day of the following month. California Labor Code section
8 204 also requires that all wages earned for labor in excess of the normal work period shall be
9 paid no later than the pay day for the next regular payroll period. During the employment of
10 Plaintiff and the aggrieved employees, Defendants failed to pay all wages due to her and the
11 aggrieved employees within the time periods required by California Labor Code Section 204,
12 including earned and unpaid regular wages, overtime wages, incentive compensation and meal
13 and rest period premium wages as discussed above.

14 f. Failing to provide a proper itemized wage statement to the Plaintiff and
15 the aggrieved employees. California Labor Code section 226 requires employers to make, keep
16 and provide complete and accurate itemized wage statements to their employees. During the
17 relevant time period, Defendants failed to provide the Plaintiffs and other aggrieved employees
18 with complete and accurate itemized wage statements, as the wage statements that Defendants
19 provided did not contain all of the information required to be listed therein per California Labor
20 Code section 226(a). By way of example, on the wage statements provided by Defendants to
21 aggrieved employees, the hours worked by the Aggrieved Employees were not listed at the
22 correct rates of pay, sick pay was reflected as time worked, and hours worked off the clock
23 were not reflected.

24 g. Failing to keep accurate record of hours worked by the Plaintiff and the
25 aggrieved employees. California Labor Code section 1174(d) requires an employer to keep,
26 at a central location in the state or at the plants or establishments at which employees are
27 employed, payroll records showing the hours worked daily by and the wages paid to, and the
28 number of piece-rate units earned by and any applicable piece rate paid to, employees employed

1 at the respective plants or establishments. These records shall be kept with rules established
2 for this purpose by the commission, but, in any case, shall be kept on file for not less than two
3 years. During the relevant time period, Defendants failed to keep accurate and complete payroll
4 records concerning the compensation paid to the Plaintiff and the aggrieved employees showing
5 the actual hours worked daily and the wages earned thereby, including earned and unpaid
6 regular wages, overtime / doubletime compensation, incentive compensation and premium
7 wages as discussed above.

8 h. Failing to reimburse Plaintiffs and the aggrieved employees for necessary
9 business expenses. California Labor Code sections 2800 and 2802 require an employer to
10 reimburse its employees for all necessary expenditures incurred by the employee in direct
11 consequence of the discharge of his or her job duties or in direct consequence of his or her
12 obedience to the directions of the employer. During the relevant time period, the Plaintiff and
13 other aggrieved employees incurred necessary business expenses and costs that were not fully
14 reimbursed by the Defendants.

15 i. California Labor Code section 98.6 prohibits employers from retaliating
16 or taking adverse actions against any employee because the employee engaged in any exercise
17 of rights afforded by the California Labor Code. During the relevant time period, Aggrieved
18 Employees were retaliated against and/or suffered adverse employment actions by Summer
19 House because they engaged in protected activities under the California Labor Code.

20 j. California Labor Code section 1102.5 prohibits employers from
21 retaliating or taking adverse actions against any employee because the employee engaged in a
22 protected activity of reporting illegal conduct or conduct reasonably believed to be illegal to
23 their supervisors or a government agency. During the relevant time period, Aggrieved
24 Employees were retaliated against and/or suffered adverse employment actions by Summer
25 House because they engaged in the protected activity of reporting illegal or conduct
26 reasonably believed to be illegal under the California Labor Code to their supervisors or a
27 government agency.
28

1 k. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff
2 individually and on behalf of the aggrieved employees and the State of California, request and
3 are entitled to recover civil penalties under California Code of Regulations Title section
4 11010, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and
5 1174.5, and any and all additional penalties and sums as provided by the California Labor
6 Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an
7 amount to be shown according to proof at trial.

8 136. Plaintiff has exhausted her administrative remedies pursuant to the California
9 Labor Code section 2699.3. On December 17, 2021, Plaintiff, through her counsel of record, by
10 online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified
11 mail to the Defendants, notified Defendant and the LWDA of the specific provisions of the
12 Labor Code and IWC Wage Order that Defendant has violated, including the facts and theories
13 to support the violations, and of Plaintiff’s intent to bring a claim for civil penalties under PAGA.
14 Plaintiff also paid the filing fee required under California Labor Code section 2699.3. As of the
15 filing of this Complaint, more than 65 days have elapsed since the Plaintiff’s PAGA notice and
16 the Labor and Workforce Development Agency has not indicated that it intends to investigate
17 the violations discussed in the PAGA notice that the Plaintiffs filed. Accordingly, Plaintiff may
18 commence a civil action to recover penalties for herself and other aggrieved employees pursuant
19 to California Labor Code section 2699.3.

20 137. Plaintiff was compelled to retain the services of counsel to file this court action
21 to protect her interests and the interests of the aggrieved employees and to assess and collect the
22 civil penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney’s
23 fees and costs pursuant to California Labor Code section 2699(g)(1) and any other applicable
24 statute.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment against enumerated Defendants as to all
27 causes of action as follows:

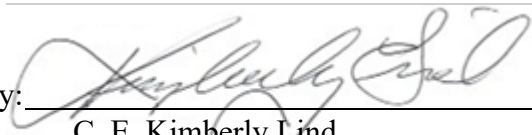
- 28 1. For general and compensatory damages;

2. For punitive damages;
3. For interest;
4. For attorney's fees;
5. For statutory penalties;
6. For civil penalties;
7. For costs of suit herein incurred; and
8. For such other and further relief as the Court may deem just and proper.

Dated: March 17, 2022

KO LEGAL, INC.

By:



C. E. Kimberly Lind
Attorney for Plaintiff
JENNIFER BERNSTEIN

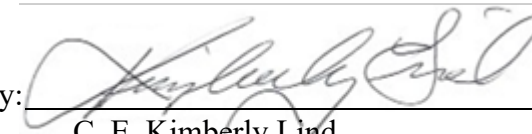
DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues triable by a jury in the above-entitled action.

Dated: March 17, 2022

KO LEGAL, INC.

By:



C. E. Kimberly Lind
Attorney for Plaintiff
JENNIFER BERNSTEIN