

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: ST. THERESE CONVALESCENT HOSPITAL,
(AVISO AL DEMANDADO): INC., a California corporation, □
d/b/a DEVONSHIRE OAKS NURSING CENTER, and DOES 1
through 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF: FERDINAND ABAD, on behalf
(LO ESTÁ DEMANDANDO EL DEMANDANTE): of himself and all "aggrieved employees" pursuant to Labor Code § 2698 et seq.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

Electronically
FILED

by Superior Court of California, County of San Mateo
ON 5/26/2022

By /s/ Una Finau
Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Mateo
400 County Center
Redwood City, CA 94063

CASE NUMBER: 22-CIV-02119
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #202754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC

4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362

818-703-8985

DATE: 5/26/2022

Neal I. Taniguchi

Clerk, by

/s/ Unaloto Finau

, Deputy

(Fecha)

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.60 (minor)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.70 (conservatee)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Alex P. Katofsky, Esq. SBN: 202754
Gaines & Gaines, APLC4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362
TELEPHONE NO.: 818-703-8985 FAX NO. (Optional): 818-703-8984
E-MAIL ADDRESS: alex@gaineslawfirm.com

ATTORNEY FOR (Name): Plaintiff, Ferdinand Abad

FOR COURT USE ONLY

Electronically
FILEDby Superior Court of California, County of San Mateo
ON 5/26/2022By /s/ Una Finau
Deputy Clerk**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO**

STREET ADDRESS: 400 County Center

MAILING ADDRESS: 400 County Center

CITY AND ZIP CODE: Redwood City, 94063

BRANCH NAME: Southern Branch: Hall of Justice and Records

CASE NAME: Abad v. St. Therese Convalescent Hospital, Inc., et al.

CIVIL CASE COVER SHEET
☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)
 ☐ **Limited**
(Amount
demanded is
\$25,000 or less)
Complex Case Designation
☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)
CASE NUMBER:
22-CIV-02119

JUDGE:

DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:**Auto Tort**
☐ Auto (22)
☐ Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)
Employment
☐ Wrongful termination (36)
☒ Other employment (15)
Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)
Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)
Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)
Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)
**Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400–3.403)**
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment☐ Enforcement of judgment (20)**Miscellaneous Civil Complaint**
☐ RICO (27)
☐ Other complaint (not specified above) (42)
Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): One (1)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/26/22

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 5/26/2022
By /s/ Una Finau
Deputy Clerk

Attorneys for Plaintiff Ferdinand Abad, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

FERDINAND ABAD, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

ST. THERESE CONVALESCENT
HOSPITAL, INC., a California corporation,
d/b/a DEVONSHIRE OAKS NURSING
CENTER, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 22-CIV-02119

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 204, 226(a), 226.7, 510, 512,
1194, AND 2802 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 210,
226.3, AND 558**

1 Plaintiff FERDINAND ABAD (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), complains of
3 ST. THERESE CONVALESCENT HOSPITAL, INC., a California corporation, d/b/a
4 DEVONSHIRE OAKS NURSING CENTER, and/or any subsidiaries or affiliated companies
5 (hereinafter referred to as “Defendants”), as follows:

6 **I.**

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
9 Plaintiff and other non-exempt California employees who currently work or formerly worked for
10 Defendants (“Aggrieved Employees”).

11 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
12 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
13 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
14 consistent policies of:

15 a. Failing to compensate Plaintiff and other Aggrieved Employees for all
16 overtime wages earned, in violation of Labor Code §§ 510, 558, and 1194. Defendants paid Plaintiff
17 and other Aggrieved Employees straight time wages only, with no adjustment for premium overtime
18 wages. Specifically, Plaintiff and other Aggrieved Employees would work in excess of 8 hours per
19 day, but were never properly compensated for work performed in excess of eight (8) hours in a
20 workday at a rate of no less than one and one-half times the regular rate of pay. This violates Labor
21 Code §§ 510, 558, and 1194;

22 b. Failing to pay all minimum and overtime wages earned during the course of
23 employment to Plaintiff and other Aggrieved Employees, in violation of Labor Code §§ 510, 558,
24 and 1194. Plaintiff and other Aggrieved Employees worked off-the-clock, without compensation in
25 numerous ways: they were not paid for time spent (1) to complete a daily COVID screening, (2) to
26 don and doff their uniform, (3) answering work-related calls outside of their scheduled shifts, and (4)
27 other pre-shift and post-shift activities, such as preparing breakfasts, and running errands. This
28 violates Labor Code §§ 510, 558, and 1194;

1 c. Requiring Plaintiff and other Aggrieved Employees to be on-call, without pay
2 after their shifts ended. If they were not called in to work while on-call, Defendants would not
3 compensate them for time spent on-call, notwithstanding the fact they were subject to Defendants'
4 control during this on-call time. An employer is obligated to pay the wages of an hourly employee
5 for all time that the employee is under the control of the employer, and this includes all the time the
6 employee is suffered or permitted to work, whether or not required to do so. When Plaintiff and other
7 Aggrieved Employees were on-call, they were under the control of Defendants and required to be
8 compensated for all hours worked. Defendants, however, failed to do so. These instances deprived
9 Plaintiff and other Aggrieved Employees of significant hours worked and minimum and overtime
10 wages due, and constitute violations of Labor Code §§ 510, 558, and 1194 and IWC Wage Order 5-
11 2001;

12 d. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
13 were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.
14 Plaintiff and other Aggrieved Employees were routinely unable to take a 10-minute rest period for
15 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
16 hour's pay for each missed rest period. Plaintiff was simply denied and not authorized to take his
17 legally entitled rest periods and was never paid premium wages for missed rest periods. This violates
18 Labor Code § 226.7 and IWC Wage Order No. 5-2001 and is alleged on behalf of all Aggrieved
19 Employees;

20 e. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
21 were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558, and 1194 and IWC
22 Wage Order 5-2001. Plaintiff and other Aggrieved Employees were routinely denied, and not
23 authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that
24 exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked
25 that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or
26 second meal period. Plaintiff and other Aggrieved Employees also were required to clock out for their
27 meal breaks and continue to work through them, off-the-clock. This violates Labor Code §§ 226.7,
28 510, 512, 558, and 1194 and IWC Wage Order 5-2001

1 f. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
2 business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor
3 Code § 2802, including, but not limited to, the use of their personal cell phones and personal vehicles
4 while working for Defendants. Labor Code § 2802 requires that an employer must indemnify its
5 employees for all necessary expenditures or losses incurred by the employee in direct consequence of
6 the discharge of their duties, and Defendants' failure to do so has violated this section;

7 g. Failing to timely pay all wages due to Plaintiff and Aggrieved Employees
8 during their employment, in violation of Labor Code §§ 204 and 210. Defendants paid Plaintiff and
9 other Aggrieved Employees on a bi-weekly basis, but failed to issue them all their wages within seven
10 calendar days of the conclusion of the payroll period, as required by Labor Code § 204(d); instead,
11 Plaintiff and other Aggrieved Employees were paid nine or more days after the close of each pay
12 period. This subjects Defendants to penalties as authorized by Labor Code § 210

13 h. Failing to provide Plaintiff and other Aggrieved Employees with wage
14 statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a).
15 Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above. As such, the
16 wage statements provided by Defendants failed to accurately state all gross wages earned, in violation
17 of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2)
18 and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at each
20 hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and

21 i. Failing to pay Plaintiff and other Aggrieved Employees all wages due at the
22 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
23 stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the course
24 of their employment and, as a result of this failure, they were not timely paid all wages due at the
25 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of
26 Plaintiff and certain Aggrieved Employees no longer employed by Defendants.

27 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
28 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose in San Mateo County, California.

II.

PARTIES

A. Plaintiff

5. Plaintiff FERDINAND ABAD was employed by Defendants from August 2018 through May 2021 as a non-exempt employee in San Mateo County, California.

B. Defendant

6. Defendant ST. THERESE CONVALESCENT HOSPITAL, INC., a California corporation, doing business as DEVONSHIRE OAKS NURSING CENTER, employed Plaintiff and Aggrieved Employees throughout the State of California, including San Mateo County, California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

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1 III.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
5 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
6 **CODE §§ 201, 202, 204, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO**
7 **LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558**

8 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
9 forth herein.

10 11. As a result of the acts alleged above, including the Labor Code violations set forth in
11 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
13 penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

14 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
15 each subsequent violation of Labor Code §§ 201, 202, 204, 226(a), 226.7, 510,
16 512, 1194, and 2802; and

17 b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code
18 §§ 210, 226.3, and 558.

19 13. Civil penalties recovered will be allocated 75% to the Labor and Workforce
20 Development Agency, and 25% to the affected employees.

21 14. On March 22, 2022, Plaintiff sent a letter, by online submission to the LWDA and by
22 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
23 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
24 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
25 calendar days of March 22, 2022. Plaintiff may therefore commence this action to seek civil penalties
26 pursuant to Labor Code § 2698 *et seq.*

27 Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as
28 described below.

1 IV.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiff prays for the following relief:

- 4 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
5 Aggrieved Employees;
- 6 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
7 and other applicable law;
- 8 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
9 law; and
- 10 4. Such other and further relief as this Court may deem just and proper.

11 Dated: May 26, 2022

12 Respectfully submitted,

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