

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 23 2022

By *Yvonne Taylor* Deputy

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com
Arrash T. Fattahi (SBN 333676)
afattahi@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CAPRICE JUSTICE WILLIAMS, on behalf of
the State of California and other aggrieved
persons,

Plaintiff,

v.

TOTAL LONGTERM CARE, INC., a
corporation; INNOVAGE CALIFORNIA PACE-
INLAND EMPIRE, LLC, a limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: **CIV SB 2213347**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

**FILE BY FAX
PER CAC
2.303**

1 Plaintiff CAPRICE JUSTICE WILLIAMS (“Plaintiff”), based upon facts that either have
2 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
3 further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants TOTAL LONGTERM CARE, INC.,
6 INNOVAGE CALIFORNIA PACE-INLAND EMPIRE, LLC, and Does 1 through 10 (hereinafter
7 collectively referred to as “Defendants”) for civil penalties under the Private Attorneys General
8 Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure
9 to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal
10 periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per
11 month, failure to maintain accurate records of hours worked and meal periods, failure to timely
12 pay final wages, failure to furnish accurate wage statements, and failure to indemnify for necessary
13 expenditures.

14 2. For over 50 years, California’s courts and legislature have recognized that this
15 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
16 Wages are not ordinary debts. Because of the economic position of the average worker and his or
17 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
18 employees are promptly paid the minimum/overtime wages that the Legislature has required for
19 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
20 criminalized certain types of violations. In extending extra protection to deter violations of these
21 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution, or
22 other damages other than civil penalties—California has enacted PAGA to permit an individual to
23 bring an action for PAGA penalties only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or were
25 harmed by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved Employees
26 worked for Defendants as hourly-paid or non-exempt employees within the applicable statutory
27 period.

28 4. Plaintiff brings this action against Defendants seeking only to recover penalties on

1 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
2 California. Plaintiff does not seek to recover anything other than penalties as permitted by
3 California Labor Code Section 2699 at this time. To the extent that statutory violations are
4 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
5 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
6 declaratory relief, and injunctive relief for herself and all Aggrieved Employees as permitted by
7 the PAGA.

8 5. Defendants own/owned and operate/operated an industry, business, and
9 establishment within the State of California, including San Bernardino County. As such and based
10 upon all the facts and circumstances incident to Defendants' business in California, Defendants are
11 subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission
12 ("IWC"), and the California Business & Professions Code.

13 6. On information and belief, Defendants, and each of them were on actual and
14 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
15 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
16 willful and deliberate.

17 7. At all relevant times, Defendants were and are legally responsible for all of the
18 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
19 foregoing paragraphs as the employers of Plaintiff and the Aggrieved Employees. Further,
20 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
21 the doctrine of "respondeat superior".

22 **THE PARTIES**

23 **A. Plaintiff**

24 8. Plaintiff CAPRICE JUSTICE WILLIAMS is a resident of San Bernardino County,
25 California who worked for Defendants in San Bernardino County, California as an hourly-paid,
26 non-exempt employee from approximately April 2021 to approximately November 2021.

27 **B. Defendants**

28 9. Plaintiff is informed and believes, and based upon that information and belief

1 alleges, that Defendants TOTAL LONGTERM CARE, INC. and INNOVAGE CALIFORNIA
2 PACE-INLAND EMPIRE, LLC are, and at all times herein mentioned, were:

3 (a) Business entities qualified to do business and actually conducting business
4 in numerous counties throughout the State of California, including San
5 Bernardino County; and,

6 (b) The former employers of Plaintiff and the current and/or former employers
7 of the Aggrieved Employees because Defendants TOTAL LONGTERM
8 CARE, INC. and INNOVAGE CALIFORNIA PACE-INLAND EMPIRE,
9 LLC suffered and permitted Plaintiff and the Aggrieved Employees to work,
10 and/or controlled their wages, hours, or working conditions.

11 10. Plaintiff does not know the true names or capacities of the persons or entities sued
12 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each
13 of the Doe Defendants were in some manner legally responsible for the damages suffered by
14 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to
15 set forth the true names and capacities of these Defendants when they have been ascertained,
16 together with appropriate charging allegations, as may be necessary.

17 11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
18 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
19 injured a significant number of the Plaintiff and the Aggrieved Employees in the State of
20 California.

21 12. Plaintiff is informed and believes and thereon alleges that at all relevant times each
22 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
23 other employees and exercised control over their wages, hours, and working conditions. Plaintiff
24 is informed and believes and thereon alleges that, at all relevant times, each Defendant was the
25 principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary,
26 affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of
27 the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise
28 for profit, and bore such other relationships to some or all of the other Defendants so as to be liable

1 for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and
2 thereon alleges that each Defendant acted pursuant to and within the scope of the relationships
3 alleged above, that each Defendant knew or should have known about, and authorized, ratified,
4 adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

5 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 13. Plaintiff CAPRICE JUSTICE WILLIAMS worked for Defendants in San
7 Bernardino County, California from approximately April 2021 to approximately November 2021.
8 At all times, Defendants paid Plaintiff an hourly wage and classified her as non-exempt from
9 overtime.

10 14. Throughout Plaintiff's employment, Defendants committed numerous labor code
11 violations under state law. As discussed below, Plaintiff's experience working for Defendants was
12 typical and illustrative.

13 **A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time,**
14 **and Overtime Wages**

15 15. Under California law, an employer must pay for all hours worked by an employee.
16 "Hours worked" is the time during which an employee is subject to the control of an employer and
17 includes all the time the employee is suffered or permitted to work, whether or not required to do
18 so.

19 16. Labor Code § 510 provides that employees in California shall not be employed more
20 than eight hours in any workday or forty (40) hours in a workweek unless they receive additional
21 compensation beyond their regular wages in amounts specified by law.

22 17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
23 be employed more than eight hours in any workday unless they receive additional compensation
24 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
25 that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

26 18. Throughout the statutory period, Defendants maintained a policy and practice of
27 not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum,
28 straight time, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees

1 to work “off-the-clock”, uncompensated, by, for example, requiring Plaintiff and the Aggrieved
2 Employees to continue working during unpaid meal periods and after they had clocked out for
3 the workday. Some of this unpaid work should have been paid at the overtime rate. In failing to
4 pay for all hours worked, Defendants also failed to maintain accurate records of the hours

5 **B. Failure to Provide Meal Periods**

6 19. Under California law, employers have an affirmative obligation to relieve
7 employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the
8 start of sixth hour of work in a workday, and to allow employees to take their second 30-minute,
9 duty-free meal period no later than the start of the eleventh hour of work in the workday. Further,
10 employees are entitled to be paid one hour of additional wages for each workday they were not
11 provided with a required meal period(s).

12 20. Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff
13 and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-
14 free meal period. Defendants regularly, but not always, required Plaintiff and the Aggrieved
15 Employees to work in excess of five consecutive hours a day without providing a 30-minute,
16 uninterrupted, and duty-free meal period for every five hours of work, or without compensating
17 Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the
18 fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over
19 Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform
20 work tasks which could not be completed without working in lieu of taking mandatory meal
21 periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period.
22 Defendants also never informed Plaintiff of her right to, nor permitted her to take, a second meal
23 period when Plaintiff worked at least ten hours of work in a workday. Accordingly, Defendants’
24 policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in
25 compliance with California law.

26 21. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of
27 additional wages for each workday he or she was not provided with all required meal period(s).
28 Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional

wages to which they were entitled for meal periods that were not provided.

C. Failure to Authorize and Permit Rest Periods

22. Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

23. Throughout the statutory period, Defendants have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

24. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest periods. Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

D. Failure to Pay All Earned Wages Twice Per Month

25. Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

26. Labor Code § 204 requires employers to pay employees all earned wages two times

1 per month. Throughout the statute of limitations period applicable to this cause of action,
2 employees were entitled to be paid twice a month at their regular rates, including all meal period
3 premium wages owed, rest period premium wages owed, and wages owed for overtime hours
4 worked. However, during all such times, Defendants systematically failed and refused to pay the
5 employees all wages due, and failed to pay those wages twice a month, in that employees were not
6 paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not
7 authorized and permitted by Defendants, and all wages for all hours worked. As a result,
8 Defendants owe employees the legally required wages not paid, and Plaintiff and the Aggrieved
9 Employees suffered damages in those amounts.

10 **E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

11 27. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to
12 California Labor Code § 1174.5, any person, including any entity, employing labor who willfully
13 fails to maintain accurate and complete records required by California Labor Code § 1174 is subject
14 to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall
15 keep time records showing when the employee begins and ends each work period. Meal periods
16 and total hours worked daily shall also be recorded

17 28. Defendants, however, failed to maintain accurate records of hours worked and all
18 meal periods taken or missed by Plaintiff and the Aggrieved Employees.

19 29. Defendants' failure to provide and maintain records required by the California
20 Labor Code and applicable IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the
21 ability to know, understand and question the accuracy and frequency of meal periods, and the
22 accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the
23 Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which
24 resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the
25 Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use
26 and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in
27 seeking to compel Defendants to fully perform its obligation under state law, all to their respective
28 damage in amounts according to proof at trial. As a result of Defendants' knowing failure to

1 comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the
2 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
3 understanding, and disputing the wage payments paid to them.

4 **F. Failure to Timely Pay All Wages at Termination**

5 30. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
6 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if
7 an employee voluntarily leaves his or her employment, his or her wages shall become due and
8 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
9 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled
10 to his or her wages at the time of quitting.

11 31. Within the applicable statute of limitations, the employment of Plaintiff and many
12 other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the
13 employment of others will be terminated. However, during the relevant time period, Defendants
14 failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without
15 abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of
16 discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These
17 unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime
18 wages), missed meal period premium wages, and missed rest period premium wages.

19 32. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203
20 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201
21 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and
22 at the same rate until paid or until an action is commenced; but the wages shall not continue for
23 more than thirty (30) days.

24 33. Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from
25 Defendants their additionally accruing wages for each day they were not paid, at their regular
26 hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

27 **G. Failure to Furnish Accurate Itemized Wage Statements**

28 34. Labor Code § 226(a) provides that every employer shall furnish each of his or her

employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Labor Code § 226(e)(2)(B)(iii).)

35. The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Labor Code § 226(e)(1).)

36. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

37. Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) dollars per employee.

///

1 **H. Failure to Indemnify for Necessary Expenditures**

2 38. Labor Code § 2802(a) provides that employers shall indemnify his or her employees
3 for all necessary business expenditures or losses that have been incurred by the employees in direct
4 discharge of his or her duties. Throughout the statute of limitations period applicable to this cause
5 of action, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses
6 that they incurred in direct discharge of their duties for Defendants. Plaintiff and the Aggrieved
7 Employees regularly paid out-of-pocket for necessary employment-related expenses, in the form
8 of work attire and use of personal cell phones. Plaintiff and the Aggrieved Employees incurred
9 substantial expenses as a direct result of performing their job duties for Defendants, but Defendants
10 failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

11 **FIRST CAUSE OF ACTION**

12 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
13 **2004, Cal. Lab. Code § 2698 et seq.)**

14 39. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as though
15 fully set forth herein.

16 40. At all times herein mentioned, Defendants were subject to the Labor Code of the
17 State of California and the applicable IWC Orders.

18 41. California Labor Code § 2699(a) specifically provides for a private right of action
19 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law,
20 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
21 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
22 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
23 civil action brought by an aggrieved employee on behalf of herself or himself and other current or
24 former employees pursuant to the procedures specified in Section 2699.3.”

25 42. Plaintiff has exhausted her administrative remedies pursuant to California Labor
26 Code § 2699.3. On April 11, 2022, she gave written notice by online filing to the Labor and
27 Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific
28 provisions of the Labor Code that Defendants have violated against Plaintiff and current and former

1 Aggrieved Employees, including the facts and theories to support the violations. Plaintiff also paid
2 the filing fee on April 11, 2022. Plaintiff's PAGA case number is LWDA-CM-878180-22 (*Caprice*
3 *Justice Williams v. Total Longterm Care, Inc., et al.*).

4 43. The statute of limitations is tolled while a plaintiff exhausts her administrative
5 remedies with California's LWDA prior to suit, which is required by the statute. (*See* Labor Code
6 § 2699.3(d).)

7 44. More than sixty-five (65) days has elapsed since Plaintiff provided notice, but the
8 LWDA has not indicated that it intends to investigate Defendants' Labor Code violations discussed
9 in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor
10 Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint.
11 These penalties include, but are not limited to, penalties under California Labor Code §§ 210,
12 226.3, 1174.5, 1197.1, and 2699(f)(2).

13 45. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
14 of civil penalties on behalf of the State of California and similarly Aggrieved Employees of
15 Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
16 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

17 46. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant
18 to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be
19 entitled to an award of reasonable attorney's fees and costs."

20 **PRAYER FOR RELIEF**

21 Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment
22 against Defendants, jointly and severally, as follows:

23 1. That the Court declare, adjudge and decree that Defendants violated the California
24 Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages),
25 failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned
26 wages twice per month, failing to maintain accurate records of hours worked and meal periods,
27 failing to timely pay final wages, failing to furnish accurate wage statements, and failing to
28 indemnify for necessary expenditures;

2. An award of civil penalties on behalf of herself and all similarly aggrieved employees pursuant to PAGA;

3. Pre-judgment and post-judgment interest at the maximum rate allowed;

4. Attorneys' fees and costs reasonably incurred;

5. Injunctive and declaratory relief to the extent allowed by PAGA; and,

6. Such other and further relief that the Court deems proper.

Respectfully submitted,

Dated: June 23, 2022

WILSHIRE LAW FIRM

By:

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

Attorneys for Plaintiff