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Assigned for All Purposes
Judge William Claster
cx-104

Attorneys for Plaintiff DELVON WINGFIELD, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and all other current and former similarly situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

DELVON WINGFIELD, on behalf of himself
and all others similarly aggrieved employees,

Plaintiff,

v.

GUARDIAN HEALTH CARE SERVICES,
INC., a California Corporation; D'AMORE
HEALTHCARE, and DOES 1- 50, Inclusive,

Defendants,

Case No. 30-2022-01277503-CU-OE-CXC

COMPLAINT

1. **Civil Penalties under the Private
Attorneys General Act (PAGA)**

Plaintiff, DELVON WINGFIELD, as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of himself and all other current and former employees, complains and alleges as follows:

1 **INTRODUCTION**

2 1. This is a representative action brought by Plaintiff, as a representative of the State
3 of California and the LWDA, and on behalf of Plaintiff and other similarly aggrieved employees,
4 to collect civil penalties for Defendant's Labor Code violations.

5 2. Defendant and employer, GUARDIAN HEALTH CARE SERVICES, INC.
6 ("Defendant"), violated numerous wage and hour laws with respect to Plaintiff and other
7 aggrieved employees by failing to provide, for example: accurate and itemized wages statements,
8 payment for all hours worked (including regular wages and overtime), failure to provide a
9 minimum wage lawful meal periods, lawful rest periods, timely payment during employment,
10 failure to reimburse for expenses incurred during the course and scope of employment, and
11 payment upon separation of employment.

12 **PARTIES**

13 **The Plaintiff**

14 3. Plaintiff is, and at all times herein mentioned was, a resident of the County of
15 Orange. Similarly aggrieved, former and/or current employees are those non-exempt employees
16 employed by Defendants during the relevant time period who were subject to the same wage and
17 hour policies/practices as Plaintiff, and thereby suffered similar or substantially similar
18 violations ("Aggrieved Employees").

19 **The Defendants**

20 4. Defendant GUARDIAN HEALTH CARE SERVICES, INC., is a California
21 Corporation which, at all relevant times mentioned herein, existing, doing business and
22 employing individuals in the County of Orange, State of California. Plaintiff is further informed
23 and thereon alleges, that Defendants, and each of them, exercised control over Plaintiff and
24 Aggrieved Employees' wages, hours, and working conditions.

25 5. The true names and capacities, whether individual, corporate, associate, or
26 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
27 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
28 amend this Complaint to insert the true names and capacities of said Defendants when the same

1 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
2 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
3 therefore liable to Plaintiff as alleged hereinafter.

4 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times
5 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
6 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
7 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
8 least in part within the course and scope of said agency, employment, conspiracy, joint
9 employment, alter ego status, and/or joint venture and with the permission and consent of each of
10 the other Defendants.

11 7. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
12 and each of them, including those Defendants named DOES 1-50, acted in concert with one
13 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
14 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
15 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
16 each of them, including those Defendants named as DOES 1-50, formed and executed a
17 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
18 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
19 to and actually causing Plaintiff harm.
20

21 8. Whenever and wherever reference is made in this Complaint to any act or failure
22 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
23 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
24

JURISDICTION AND VENUE

25 9. Venue is proper in Orange County, because Defendant maintains its locations and
26 transacts business in this county, the obligations and liability primarily arise in this county, and
27 work was primarily performed by Plaintiff and other Aggrieved Employees in this county.

28 10. The California Superior Court has jurisdiction over this matter. The individual

claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional amount required for diversity removal. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including, but not limited to, the California Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, and California Rules of Court.

GENERAL ALLEGATIONS

11. Defendant employed Plaintiff as a Behavioral Health Technician from on or about July 2021, to on or about December 2021.

12. At all relevant times herein, Defendant employed Plaintiff and other Aggrieved Employees as non-exempt employees. Aggrieved Employees mean and refer to all persons who worked for Defendant as non-exempt employees at any time during the specified relevant time period and were subject to the same wage and hour practices and policies as Plaintiff.

13. On many occasions, Plaintiff and Aggrieved Employees would work more than 8 hours per day or 40 hours per week without overtime pay. Plaintiff and similarly Aggrieved Employees would not receive all compensable work time or their work time was illegally rounded. Similarly Aggrieved Employees would be paid overtime at an illegally calculated rate.

14. Defendant regularly did not have enough employees to provide sufficient coverage to maintain their business operations so Plaintiff and similarly Aggrieved Employees could not take complete, timely and uninterrupted meal and rest breaks.

15. In an effort to curtail labor costs, Defendant regularly and consistently did not have enough staff employees to provide sufficient coverage to both maintain their business operations and provide legally mandated meal and rest periods, despite reasonably foreseeable work load, so Plaintiff and similarly Aggrieved Employees could not take complete, timely and uninterrupted meal and rest breaks because Defendant prioritized completion of daily duties ahead of meal and rest period compliance.

16. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its

1 departments, divisions, commissions, boards, agencies or employees for violation of the code
2 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
3 behalf of himself or herself and other current or former employees pursuant to the procedures
4 specified in Labor Code section 2699.3.

5 17. For all provisions of the Labor Code except those for which a civil penalty is
6 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a
7 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
8 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
9 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

10 18. Defendant's conduct during the PAGA period with respect to Plaintiff and the
11 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

12 19. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and
13 hour violations under the California Labor Code and IWC Wage Orders.

14 20. At all relevant times herein, Defendant employed Plaintiff and other Aggrieved
15 Employees as non-exempt employees holding various positions and who experienced the
16 violations set forth in this Complaint.

17 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
18 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages
19 for all hours worked, including the applicable minimum, regular, and overtime wages, and that
20 they were not receiving all wages earned for work that was required to be performed. In violation
21 of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved
22 Employees for all hours worked. Accordingly, Defendant failed to pay Plaintiff and Aggrieved
23 Employees all earned minimum, regular, and/or overtime compensation.

24 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
25 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
26 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
27 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
28

1 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
2 and policy of not providing timely meal periods. Defendants failed to pay an additional hour of
3 pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendant's
4 unlawful policy and practice, Plaintiff and Aggrieved Employees did not receive all meal periods
5 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular
6 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

7 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
8 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
9 required rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
10 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
11 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
12 and policy of not providing timely rest periods. Defendant failed to pay an additional hour of
13 pay to Plaintiff and Aggrieved Employees for each rest period not provided or was interrupted.
14 As a result of Defendant's unlawful policy and practice, Plaintiff and Aggrieved Employees did
15 not receive all required rest periods or payment of one (1) additional hour of pay at Plaintiff's
16 and Aggrieved Employees' regular rate of pay when they did not receive a timely, uninterrupted
17 10 minute off-duty rest period.
18

19 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
20 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
21 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
22 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
23 time periods, upon separation of employment.

24 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
25 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
26 wage statements that accurately showed their actual hours worked, total hours worked, number
27 of hours worked at each hourly rate, gross and net wages earned, and correct employer
28 information in accordance with California law. In violation of the Labor Code, Plaintiff and

1 Aggrieved Employees were not provided with accurate itemized wage statements that accurately
2 reported their gross and net wages earned, total hours worked, each applicable rate of pay in
3 effect during the pay period with the corresponding number of hours worked, and the address of
4 the legal entity that is the employer, among other things.

5 26. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
6 should have known that Defendant was required to maintain accurate records of the hours
7 worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendant failed
8 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
9 unfair rounding practices, among other things.

10 **FIRST CAUSE OF ACTION**

11 **(Civil Penalties Under the Private Attorneys General Act,**
12 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

13 27. By this complaint, Plaintiff brings this case as a representative action seeking
14 penalties for himself, the Aggrieved Employees, and the State of California in a representative
15 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
16 employee who was employed by Defendant and subject to at least one of the Labor Code
17 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
18 his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
19 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.
20

21 28. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
22 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
23 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
24 not to investigate, or after 65 days have passed without notice from the LWDA.

25 29. Prior to filing this complaint, on June 15, 2022, Plaintiff gave written notice of
26 the specific provisions alleged to have been violated, including the facts and theories to support
27 the alleged violations, as required by Labor Code section 2699.3. The written notice was given
28 via certified mail to Defendants, and the LWDA by electronically filing the notice via the

1 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
2 LWDA-CM-847935-21. A true and correct copy of Plaintiff's notice to the LWDA and
3 Defendant(s), dated June 15, 2022 is attached hereto as **Exhibit A**.

4 30. The LWDA has not provided Plaintiff with any notice that it intends to investigate
5 the violations as alleged in Plaintiff's June 15, 2022 notice, and more than 65 calendar days have
6 elapsed since the postmark date on the notice.

7 31. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
8 of this code that provides for a civil penalty to be assessed and collected by the Labor and
9 Workforce Development Agency...for a violation of this code, may, as an alternative, be
10 recovered through a civil action brought by an aggrieved employee on behalf of himself or
11 herself and other current or former employees pursuant to the procedures specified in Section
12 2699.3."

13 32. As an aggrieved employee, Plaintiff brings this civil action to recover civil
14 penalties for Defendant's Labor Code violations.

15 **FIRST VIOLATION**

16 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

17 33. Under California Labor Code §512(a), "An employer may not employ an
18 employee for a work period of more than five hours per day without providing the employee
19 with a meal period of not less than 30 minutes, except that if the total work period per day of the
20 employee is no more than six hours, the meal period may be waived by mutual consent of both
21 the employer and employee."

22 34. Defendant violated Labor Code § 512 by failing to provide Plaintiff, and other
23 qualifying employees who worked shifts of greater than five hours, meal periods within the first
24 five hours of the shifts worked. Defendant failed to pay Plaintiff one hour's pay at Plaintiff's
25 regular rate of pay for each day Defendant failed to provide a meal period in compliance with
26 section 512.
27
28

1 **SECOND VIOLATION**

2 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

3 35. Under California Labor Code §226.7(b), “An employer shall not require an
4 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
5 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

6 36. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize
7 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
8 of each work period. The authorized rest period time shall be based on the total hours worked
9 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

10 37. Defendant failed to authorize and permit Plaintiff and other employee to take rest
11 periods and mandated by the Wage Order.

12 38. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
13 one additional hour of pay at the employee’s regular rate of compensation for each workday that
14 the meal or rest or recovery period is not provided.”

15 39. Defendant failed to pay Plaintiff and other employees who were not provided rest
16 periods one hour of pay at their regular rate of pay.

17 **THIRD VIOLATION**

18 **(Failure to Provide Complete and Accurate Wage Statements,**
19 **in Violation of Labor Code Section 226)**

20 40. Under California Labor Code §226(a), an employer is legally obligated to provide
21 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
22 in writing...”

23 41. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
24 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
25 Labor Code § 2699.
26

27 //

28 //

1 **FOURTH VIOLATION**

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

3 42. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
4 employer is required to compensate employees for all overtime, which is calculated at one and
5 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
6 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
7 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
8 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
9 any workweek.

10 43. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
11 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
12 Labor Code § 2699.

13 **FIFTH VIOLATION**

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

15 44. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
16 payment to an employee of less than the applicable minimum wage for all hours worked in a
17 payroll period is unlawful.

18 45. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
19 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
20 Labor Code § 2699.

21 **SIXTH VIOLATION**

22 **(Failure to Timely Pay Wages During Employment)**

23 46. Pursuant to California Labor Code § 204, for all labor performed between the 1st
24 and 15th days of any calendar month, an employer is required to pay its employees between the
25 16th and 26th day of the month during which the labor was performed. California Labor Code §
26 204 also provides that for all labor performed between the 16th and 26th days of any calendar
27 month, Defendants are required to pay their employees between the 1st and 15th day of the
28

1 following calendar month. In addition, California Labor Code § 204 provides that all wages
2 earned for labor in excess of the normal work period shall be paid no later than the payday of the
3 next regular payroll period.

4 47. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
5 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
6 Labor Code § 2699.

7 **SEVENTH VIOLATION**

8 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

9 48. Pursuant to California Labor Code § 201, 202, and 203, Defendant is required to
10 pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
11 201 mandates that if an employer discharges an employee, the employee's wages accrued and
12 unpaid at the time of discharge are due and payable immediately.

13 49. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
14 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
15 Labor Code § 2699.

16 **EIGHTH VIOLATION**

17 **(Failure to Reimburse Business Expenses)**

18 (Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 68.
19

20 50. Labor Code section 2802 provides that an employer shall indemnify his or her
21 employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
23 the employer.

24 51. Defendant failed to indemnify Plaintiff and Aggrieved Employees for all
25 necessary expenditures or losses incurred by Plaintiff and Aggrieved Employees in direct
26 consequence of the discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff
27 and Aggrieved Employees for expenditures they incurred on their behalf, including, but not
28

1 limited to use of their personal mobile phones to conduct company business. In violation of the
2 Labor Code, Defendant failed to reimburse Plaintiff and Aggrieved Employees for these
3 business-related expenditures.

4 52. Furthermore, Plaintiff and Aggrieved Employees were required to use their
5 personal cellphones in the course and scope of their employment to carry out their employment
6 duties, including without limitation contacting clients and communicating with their supervisors
7 for instructions or to provide status reports. Plaintiff and Aggrieved Employees were not
8 provided reimbursement for the reasonable usage of their personal cellphone by Defendant.

9 53. By virtue of Defendant's unlawful actions, Plaintiff and the Aggrieved
10 Employees have suffered, and will continue to suffer, damages in amounts which are presently
11 unknown, but will be ascertained according to proof at trial.

12 54. Plaintiff seeks recovery of civil penalties individually, on behalf of the Aggrieved
13 Employees and the State of California for violations of Labor Code section 2802 during the
14 PAGA period, in a sum as provided by the Labor Code and/or other statutes.

15 55. Plaintiff, individually and on behalf of the aggrieved employees and the State of
16 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
17 (g) and Code of Civil Procedure section 1021.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff prays for the following relief:

- 20
- 21 1. For penalties in an amount according to proof;
 - 22 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
 - 23 3. For such other and further relief as this Court may deem just and proper.
- 24

25 Dated: August 23, 2022

Respectfully Submitted,
WORK LAWYERS, PC

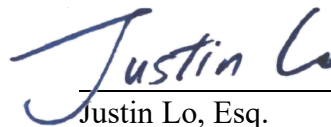
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28 Justin Lo, Esq.

EXHIBIT A



AMENDED NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Labor Code § 2699.3)

DATE June 15, 2022

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California
Workforce Development Agency
PAGAfilings@dir.ca.gov

SUBJECT: Delvon Wingfield v. Guardian Health Care Services, Inc.; ET AL — AMENDED NOTICE OF LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.3

Dear Representative:

This office represents Delvon Wingfield (“Mr. Wingfield”) with respect to his claims against Guardian Health Care Services, Inc. (“Employer”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employers by certified mail.

Employers are a corporation doing business in the State of California. Employers employed Mr. Wingfield from approximately July 26, 2021, to December 15, 2021, as a non-exempt employee. During his employment with Employers, Mr. Wingfield was employed as a “Behavioral Health Technician”. Employers’ office is located at 16541 Gothard St., Ste. 102, Hunting Beach, CA 92647. Mr. Wingfield’s job responsibilities included checking up on patients, administering medication, upkeeping patients’ homes, writing up notes, and auditing other technicians’ work. Mr. Wingfield regularly worked from 8:00 PM until 8:00 AM three days per week or more. Despite working more than 8 hours in a given workday, Mr. Wingfield and Aggrieved Employees would not receive appropriate overtime pay. Mr. Wingfield and Aggrieved Employees regularly did not receive timely, uninterrupted, or complete meal or rest breaks, because employers expected round-the-clock coverage with insufficient staffing. Mr. Wingfield and Aggrieved Employees were also required to use their own personal cell phones to clock-in and out of Employers’ time-keeping system, to participate in internal communications with and fill out documents for Employers. Mr. Wingfield and Aggrieved Employees would also use their



personal tools to complete work tasks. Mr. Wingfield and Aggrieved Employees were required to respond to work-related text messages while off the clock.

Mr. Wingfield intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“PAGA”). Mr. Wingfield is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employers (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3.

Joseph John Emma III and Benjamin Smith (hereinafter “managing agents”) were and are officers, corporate agents, executives, directors, and/or owners of respectfully Guardian Health Care Services, Inc., D’Amore Healthcare, and D’Amore Mental Health. Among other things, these managing agents operated and controlled Guardian Health Care Services, Inc., D’Amore Healthcare, and D’Amore Mental Health, personally and specifically established and enforced the employee and other policies for Guardian Health Care Services, Inc., D’Amore Healthcare, and D’Amore Mental Health, otherwise, continue to cause the wage and hourly violations and other wrongs alleged. The managing agents are responsible for all wage and hourly violations and other wrongs perpetrated upon Complainant and other aggrieved employees.

On information and belief, managing agents have control over the disbursement, maintenance, and accounting for all unpaid wages due and owing to its employees, and thus caused and/or ratified the under paying of employer’s employees. Employer and managing agents caused and/or ratified the violations pursuant to Labor Code Sections 558, 558.1, and 1197.1, making them jointly and severally liable as individuals with the corporate entities.

As detailed below, Employers violated several of California’s wage and hour laws during Mr. Wingfield employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including inter alia, IWC Wage Order No. 5. The claims made on behalf of Mr. Wingfield and Aggrieved Employees are based upon the following facts and theories:

- 1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.**

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Mr. Wingfield and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.



First, Employers regularly required Mr. Wingfield and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Wingfield and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Wingfield and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Wingfield and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Wingfield and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Mr. Wingfield and Aggrieved Employees, which resulted in a failure to pay Mr. Wingfield and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Mr. Wingfield and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Mr. Wingfield and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Wingfield and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employers failed to provide Mr. Wingfield and Aggrieved Employees with legally compliant 30-minute meal periods. Employers required Mr. Wingfield and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Wingfield and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Mr. Wingfield and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Wingfield and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.



Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Wingfield and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Mr. Wingfield and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Mr. Wingfield and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Wingfield and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Mr. Wingfield and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Wingfield and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Wingfield and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Wingfield and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.

Employers failed to authorize and permit Mr. Wingfield and Aggrieved Employees take legally compliant 10-minute periods. Employers required Mr. Wingfield and Aggrieved Employees to work through rest periods. Mr. Wingfield and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Wingfield and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In



the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Wingfield and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Wingfield and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Mr. Wingfield and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Mr. Wingfield and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Wingfield and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Mr. Wingfield and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Wingfield and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Mr. Wingfield and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), and 1198.

Mr. Wingfield and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Wingfield and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).



Mr. Wingfield and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUTTING EMPLOYEES.

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Wingfield and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 201(a), 202(a) and 203(a).

Ms. Wingfield and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, the wage statements provided to Mr. Wingfield and Aggrieved Employees never included the actual hours worked, all owed wages and the correct rates of pay, and did not include the name and address of the legal employing entity. Accordingly, Employers violated California Labor Code section 226(a).

Mr. Wingfield and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

7. FAILURE TO MAINTAIN ACCURATE RECORDS.

Employers have failed to maintain accurate records relating to Mr. Wingfield and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Mr. Wingfield and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

8. FAILURE TO REIMBURSE NECESSARY EXPENDITURES.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr.

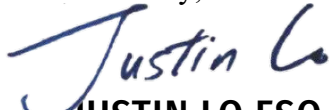


Wingfield and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the use of Mr. Wingfield and Aggrieved Employees of their personal cell phone to send and receive messages and calls through Google Hangouts, fill out work documents through Google Drive, and clock-in and out from Employer's time-keeping system ESS Mobile.

Accordingly, Employers violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Mr. Wingfield and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

Sincerely,



JUSTIN LO ESQ.

Notice provided to Employer via Certified Mail

Joseph John Emma
Agent for Service of Process for
Guardian Health Care Services, Inc.
16541 Gothard St., Suite 102
Huntington Beach, CA 92647

Notice provided to Employer via Certified Mail

Guardian Health Care Services, Inc.
Human Resources/Legal Dept.
16541 Gothard St., Suite 102
Huntington Beach, CA 92647

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Notice provided to Employer via Certified Mail

D'Amore Healthcare
Human Resources/Legal Dept.
16541 Gothard St., Suite 102
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Notice provided to Employer via Certified Mail

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