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VENTURA SUPERIOR COURT

**FILED**

08/05/2025

K. Bieker  
Executive Officer and Clerk

Denise Smith

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

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

ROBERTO OROZCO, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

CLEARWATER SENIOR LIVING, L.L.C., a  
California limited liability company; CSL  
BERKSHIRE OPERATING COMPANY,  
L.L.C., a Delaware limited liability company;  
and Does 1-50,

Defendants.

Case No.: 56-2022-00568082-CU-OE-VTA

**SECOND AMENDED CLASS ACTION AND  
REPRESENTATIVE ACTION COMPLAINT**

1. Failure To Provide Meal Periods. (Cal. Lab. Code §§ 226.7, 512, & 1198);
2. Failure To Provide Rest Periods (Cal. Lab. Code §§ 226.7 & 1198);
3. Failure to Pay Minimum and Overtime Wages (Cal. Lab. Code §§ 510, 1194, 1198);
4. Failure To Pay for All Hours Worked (Cal. Lab. Code §, IWC Wage Order 10-2001);
5. Failure To Furnish Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
6. Failure To Keep Requisite Payroll Records (Cal. Lab. Code § 1174(D));
7. Waiting Time Penalties (Cal. Lab. Code §§ 201-203);
8. Wages Not Timely Paid During Employment (Cal. Lab. Code § 204)
9. Failure to Indemnify All Necessary Business Expenditures (Cal. Lab. Code § 2802)
10. Unfair Competition (Bus. & Prof. Code § 17200, *Et Seq.*);
11. Private Attorneys General Act (Cal. Lab. Code § 2699)

**JURY TRIAL DEMANDED**

COMES NOW, Plaintiff ROBERTO OROZCO (“Plaintiff”), individually, and on behalf of all others similarly situated, complains, and alleges as follows:

**INTRODUCTION**

1. Plaintiff brings this class, collective, and representative action, against CLEARWATER SENIOR LIVING, L.L.C., and CSL BERKSHIRE OPERATING COMPANY, L.L.C., and DOES 1-50 (collectively referred to as “Defendants”), and on behalf of other persons similarly situated in California (collectively referred to as “Class Members”) from the date four years prior to the filing of the Complaint through the date of preliminary approval.

2. Defendants own and operate senior living facilities with five known locations in the state of California.

3. Due to Defendants’ policies and practices, Defendants have violated numerous provisions of the California Labor Code, including failing to pay minimum and overtime wages, failure to furnish timely statements accurately showing, among other things, the total hours Plaintiff and the other Class Members worked during each pay period. Plaintiff also alleges that these acts, which violate the California Labor Code, constitute predicate unlawful and unfair business practices in violation of the California Unfair Competition Laws.

4. Plaintiff began employment with Defendants as a concierge on December 3, 2018.

5. Among other violations, and by way of example only, Plaintiff did not receive appropriate uninterrupted meal and rest breaks. During rest breaks, Plaintiff was often required to bring an iPad on break and respond to his employer during breaks. Absent mutual consent, Plaintiff was further required to waive meal breaks without say in the matter.

6. Plaintiff was further not compensated for all hours worked, including overtime hours worked in a given 24-hour period among other violations.

**JURISDICTION AND VENUE**

7. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorney’s fees, is less than seventy-five thousand dollars (\$75,000).

8. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure § 410.10 and the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Ventura. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Ventura.

**PARTIES**

11. Plaintiff Roberto Orozco is an individual residing in the State of California, County of Ventura.

12. Defendant Clearwater Living, L.L.C., at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Ventura.

13. Defendant CSL Berkshire Operating Company, L.L.C., at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Ventura.

14. At all relevant times, Defendant Clearwater Living, L.L.C. and Defendant CSL Berkshire

Operating Company, L.L.C. were the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

15. At all times herein relevant, Defendants Clearwater Living, L.L.C., CSL Berkshire Operating Company, L.L.C, and DOES 1 through 50, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

16. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 50, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained

17. Defendants Clearwater Living, L.L.C., CSL Berkshire Operating Company, L.L.C, and DOES 1 through 50 will herein collectively be referred to as “Defendants”.

18. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

#### **CLASS ACTION ALLEGATIONS**

19. Plaintiff incorporates all of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

20. Class Members: Plaintiff brings this action on behalf of himself, and all others similarly situated pursuant to Code of Civil Procedure § 382 on behalf of the proposed class.

1           21.     The proposed class is defined as follows: All persons employed by Defendants in  
2 California as hourly and/or otherwise non-exempt employees during Class Period.

3           22.     The Class Period is defined as the period from July 18, 2018, through preliminary  
4 approval.

5           23.     **Reservations of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right  
6 to amend or modify the class definitions with greater specificity, by further division into subclasses,  
7 and/or by limitation to particular issues.

8           24.     **Numerosity:** Plaintiff is informed and believes and thereon alleges that Class Members  
9 are so numerous that the individual joinder of each class member is impractical. Plaintiff is informed,  
10 believes, and thereon alleges that the actual number exceeds the minimum number required for  
11 numerosity purposes under Code of Civil Procedure § 382.

12          25.     **Predominant Common Questions:** Plaintiff is informed, believes, and thereon alleges  
13 that common questions of law and fact exist as to all Class Members and predominate over any questions  
14 that only affect individual class members. These questions include, but are not limited to:

- 15           a.     Whether, by failing to pay premium wages to Class Members, Defendants have failed  
16                 to provide them with written wage statements that accurately reflect their gross and  
17                 net wages earned?
- 18           b.     Whether, by failing to pay premium wages to Class Members, Defendants are liable  
19                 to them for waiting time penalties under Labor Code § 203?
- 20           c.     Whether, by withholding wages from Class Members, Defendants have violated Labor  
21                 Code § 221?
- 22           d.     Whether Defendants complied with wage reporting as required by the California  
23                 Labor Code, including, *inter alia*, section 226?
- 24           e.     Whether Defendants failed to pay timely and complete wages to former employees at  
25                 termination in violation of California Labor Code, sections 201, 202, and 203?
- 26           f.     Whether Defendants kept complete and accurate payroll records as required by the  
27                 California Labor Code, including *inter alia*, section 1174(d)?  
28

- g. Whether Defendants failed to reimburse business expenses in violation of California Labor Code, section 2802?
- h. Whether Defendants' conduct was willful or reckless?
- i. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*?
- j. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law?
- k. Whether Plaintiff and the other Class Members are entitled to compensatory damages pursuant to the California Labor Code?
- l. Whether Plaintiff and others are entitled to civil penalties under California Labor Code section 2699 *et seq.*?

26. **Typicality**: Plaintiff is informed, believes, and thereon alleges that his claims are typical of class members' claims in that Defendants have policies and practices that violate the Labor Code, Wage Order 10-2001 ("Wage Order"), and Business and Professions Code as alleged herein that enable them to seek the same relief as they are under the same theories of recovery.

27. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and protect the interests of Class Members in that he has no interests that are adverse to Class Members and is represented by counsel experienced in employment and wage and hour class action litigation.

28. **Superiority**: A class action is superior to other available means for fair and efficient adjudication of Class Members' claims and offers significant benefits to the parties and the court. A class action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. The monetary amounts due to many class members are likely to be relatively small, thus making it difficult, if not impossible, for individual class members to seek and obtain relief. Moreover, a class action will serve important public interests by enabling the non-waivable statutory rights of class members to be effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating the rights of current employees who are less likely to come forward to assert those rights based on fears of employer

1 reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments  
2 inherent in individual litigation and address the problems inherent in random and fragmentary  
3 enforcement.

#### 4 **GENERAL ALLEGATIONS**

5 29. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as  
6 hourly-paid or non-exempt employees within the State of California, including the County of Ventura.

7 30. Defendants began employing Plaintiff as an hourly-paid, non-exempt employee, on  
8 approximately December 3, 2018, in the State of California.

9 31. Defendants hired Plaintiff and the other Class Members and aggrieved employees and  
10 classified them as hourly-paid or non-exempt employees and failed to compensate them for all hours  
11 worked including overtime compensation.

12 32. Defendants had the authority to hire and terminate Plaintiff and the other Class Members  
13 and aggrieved employees, to set work rules and conditions governing Plaintiff's and the other Class  
14 Members' and aggrieved employees' employment and supervise their daily employment activities.

15 33. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and  
16 the other Class Members' and aggrieved employees' employment.

17 34. Defendants directly hired and paid wages and benefits to Plaintiff, the other Class  
18 Members, and aggrieved employees.

19 35. Defendants continue to employ hourly-paid and/or non-exempt employees within the  
20 State of California.

21 36. Plaintiff and the other Class Members and aggrieved employees worked over eight (8)  
22 hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

23 37. Despite working diligently for Defendants, Plaintiff did not receive proper overtime pay.

24 38. When Defendants paid overtime wages, overtime, sick leave, meal premiums, and rest  
25 premiums to the Class Members and the Aggrieved Employees, Defendants failed to include all  
26 compensation when calculating the regular rate of pay.

27 39. If employees could not find another employee during their rest break, employees were  
28 required to carry their company iPads during rest breaks in violation of California Law. *See Augustus v.*

1 ABM Sec. Servs., Inc., 2 Cal. 5th 257, 385 P.3d 823 (2016), as modified on denial of reh'g (Mar. 15,

2 2017).

3 40. Defendants required certain employees to sign meal waivers without mutual consent in

4 violation of California Labor Code Section 512(a).

5 41. Defendants further required certain employees to sign meal waivers when working shifts

6 that exceeded 6 hours, in violation of California Labor Code Section 512(a).

7 42. Defendants failed to pay Plaintiff and similarly situated employees appropriate premiums

8 for their missed or interrupted breaks at their regular rate of pay, resulting in unpaid wages for each pay

9 period in which an employee's meal or rest break was missed or interrupted.

10 43. Defendants failed to pay Plaintiff the required compensation of one- and one-half times

11 his regular rate for hours worked in excess of eight (8) per day.

12 44. Defendants failed to reimburse Plaintiff and similarly situated employees for necessary

13 business expenditures, including cell phone use and uniforms.

14 45. The abuses suffered by Plaintiff were in no way unique to him. Instead, Defendants' labor

15 violations alleged herein are widespread and systemic and, upon information and belief, occurred to Class

16 Members.

17 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in

18 a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State

19 of California. This pattern and practice involved, *inter alia*, failure to pay for all hours worked, including

20 overtime wages in violation of California law.

21 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or

22 should have known that Plaintiff and the other Class Members and aggrieved employees were entitled to

23 receive complete and accurate wage statements in accordance with California law, but, in fact, they did

24 not receive complete and accurate wage statements from Defendants. The deficiencies included, *inter*

25 *alia*, the failure to include the total number of hours worked, including overtime wages, by Plaintiff and

26 the other Class Members.

27 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or

28 should have known that Defendants had to keep complete and accurate payroll records for Plaintiff and



1 the other Class Members and aggrieved employees in accordance with California law, but, in fact, did  
2 not keep complete and accurate payroll records.

3 49. Plaintiff is informed and believes, and based-thereon alleges, that Defendants knew or  
4 should have known that they had a duty to compensate Plaintiff and the other Class Members and  
5 aggrieved employees pursuant to California law, and that Defendants had the financial ability to pay such  
6 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to  
7 Plaintiff and the other Class Members and aggrieved employees that they were properly denied wages,  
8 all in order to increase Defendants' profits.

9 50. During the relevant time period, Defendants failed to provide complete or accurate wage  
10 statements to Plaintiff and the other Class Members and aggrieved employees.

11 51. During the relevant time period, Defendants failed to keep complete or accurate payroll  
12 records for Plaintiff and the other Class Members and aggrieved employees.

13 52. During the relevant time period, Defendants failed to properly compensate Plaintiff and  
14 the other Class Members and aggrieved employees pursuant to California law in order to increase  
15 Defendant's profits.

16 53. California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall limit  
17 the right of any wage claimant to "sue directly ... for any wages or penalty due to him [or her] under this  
18 article."

### 19 **STATEMENT OF LWDA NOTICE COMPLIANCE**

20 54. Plaintiff provided written notice by certified mail to the Labor and Workforce  
21 Development Agency ("LWDA") and Defendants. The notice contained the legal claims and theories of  
22 this case. The LWDA has not responded to Plaintiff's letter or otherwise indicated that it is investigating  
23 the claims, and it has been more than sixty-five (65) days since the letter was sent; as such, Plaintiff has  
24 exhausted administrative remedies per Labor Code § 2699.3. Plaintiff provided amended notice to the  
25 LWDA and Defendants of the additional allegations contained in this Second Amended Complaint.

### 26 **FIRST CAUSE OF ACTION**

#### 27 ***Failure To Provide Meal Periods***

28 **(Lab. Code §§ 226.7, 512, and 1198)**

1           55.     Plaintiff incorporates all of the preceding paragraphs of this Complaint as if fully set forth  
2 herein.

3           56.     Labor Code § 512 and Section 11 of the Wage Order impose an affirmative obligation on  
4 employers to provide non-exempt employees with a first uninterrupted, duty- free, meal period of at least  
5 thirty minutes for each work period of five or more hours before the end of the fifth hour of work, and to  
6 provide them with a second uninterrupted, duty-free, meal period of at least thirty minutes for each work  
7 period of more than ten hours before the end of the tenth hour of work.

8           57.     Labor Code § 512(a) requires that if a meal period is waived, it must be by mutual consent.

9           58.     Labor Code § 226.7 and Section 11 of the Wage Order require employers to pay non-  
10 exempt employees an additional hour of premium wages at the employee's regular rate of compensation  
11 for each workday that the employee is not provided with a meal period.

12          59.     Labor Code § 1198 makes it unlawful for an employer to employ any person under  
13 conditions of employment that violate the Wage Order.

14          60.     At relevant times during their employment, Defendants failed to relieve Plaintiff of all  
15 duty for a first uninterrupted meal period of at least thirty minutes before the end of their fifth hour of  
16 work and/or for a second uninterrupted meal period of at least thirty minutes before the end of their tenth  
17 hour of work, and Defendants did not always give employees an option as to whether they would take  
18 meal breaks, and there was not mutual consent regarding meal period waivers.

19          61.     At relevant times during their employment, Defendants failed to compensate Plaintiff for  
20 the missed or interrupted meal periods by not paying them an additional one hour of wages for each  
21 missed or interrupted meal period at their regular rate of pay.

22          62.     Plaintiff is informed, believes, and thereon alleges that, at all relevant times, Defendants  
23 have maintained policies and practices with respect to employee scheduling and meal periods that have  
24 prevented Class Members from being relieved of all duty for a first uninterrupted meal period of at least  
25 thirty minutes before the end of their fifth hour of work and/or for a second uninterrupted meal period of  
26 at least thirty minutes before the end of their tenth hour of work, and have failed to appropriately pay  
27 them premium wages for those workdays.

28          63.     Pursuant to Labor Code § 226.7, Plaintiff seeks to recover premium wages and all other

1 available damages on behalf of themselves and Class Members in amounts subject to proof.

2 64. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the  
3 common fund doctrine, Plaintiff, on behalf of himself and Class Members, seeks awards of reasonable  
4 attorneys' fees and costs in amounts subject to proof at trial.

5 **SECOND CAUSE OF ACTION**

6 ***Failure to Provide Rest Periods***

7 **(Lab. Code §§ 226.7 and 1198)**

8 65. Plaintiff incorporates all of the preceding paragraphs of this Complaint as if fully set forth  
9 herein.

10 66. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit  
11 and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time  
12 for each four-hour work period, or major portion thereof, that must be in the middle of each work period  
13 insofar as is practicable.

14 67. Labor Code § 226.7 and Section 12 of the Wage Order require employers to pay non-  
15 exempt employees an additional hour of premium wages at the employee's regular rate of compensation  
16 for each workday that the employee is not provided with a rest period.

17 68. Labor Code § 1198 makes it unlawful for an employer to employ any person under  
18 conditions of employment that violate the Wage Order.

19 69. At relevant times during his employment, Defendants failed to authorize and permit  
20 Plaintiff to take net uninterrupted rest periods where Plaintiff was free from work duties of at least ten  
21 minutes for each four-hour work period, or major portion thereof, and failed to pay him premium wages  
22 on those workdays.

23 70. At relevant times during their employment, Defendants failed to compensate Plaintiff for  
24 the missed or interrupted rest periods by not paying them an additional one hour of wages for each missed  
25 or interrupted rest period at their regular rate of pay

26 71. Plaintiff is informed, believes, and thereon alleges that, at all relevant times, Defendants  
27 have maintained policies and practices with respect to employee scheduling and rest periods that have  
28

1 failed to authorize and/or reasonably permit Class Members to take net rest periods for each four-hour  
2 work period, or major portion thereof.

3 72. Pursuant to Labor Code § 226.7, Plaintiff seeks to recover premium wages on behalf of  
4 himself and Class Members in amounts subject to proof.

5 73. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the  
6 common fund doctrine, Plaintiff, on behalf of himself and the Class Members, seeks awards of reasonable  
7 attorneys' fees and costs in amounts subject to proof.

### 8 **THIRD CAUSE OF ACTION**

#### 9 ***Failure to Pay Minimum and Overtime Wages***

#### 10 **(Lab. Code §§ 510, 1194 and 1198)**

11 74. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as  
12 if fully set forth herein.

13 75. At all relevant times, Plaintiff and Class Members have been hourly or non-exempt  
14 employees of Defendants entitled to the full protections of the Labor Code and of the Wage Order.

15 76. Labor Code § 1198 makes it unlawful for an employer to employ any person under  
16 conditions of employment that violate the Wage Order.

17 77. Section 2(H) of the Wage Order defines "hours worked" as "the time during which an  
18 employee is subject to the control of the employer, [which] includes all the time the employee is suffered  
19 or permitted to work, whether or not required to do so."

20 78. Labor Code §§ 510 and 1194, and Section 3 of the Wage Order, require employers to pay  
21 overtime wages to their non-exempt employees at no less than one and one-half times their regular rates  
22 of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess of forty  
23 hours in one workweek, and for the first eight hours worked on a seventh consecutive workday.

24 79. Plaintiff is informed, believes, and thereon alleges that, at all relevant times and as matters  
25 of policy or practice, Defendants have failed to pay Class Members overtime wages for hours worked  
26 due to class-wide policies and practices.

27 80. Here, Defendants violated their duty to accurately and completely compensate the Class  
28 Members and the Aggrieved Employees for all overtime worked. The Class Members and the Aggrieved

1 Employees periodically worked hours that entitled them to overtime compensation under the law but  
2 were not fully compensated for those hours.

3 81. Moreover, during the relevant statutory periods, Defendants had a policy and practice of  
4 failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when  
5 Defendants paid overtime wages to the Class Members and the Aggrieved Employees, Defendants failed  
6 to include all compensation when calculating the regular rate of pay used in overtime calculations and  
7 when paying overtime, sick leave, meal premiums, and rest premiums.

8 82. For instance, the Class Members and the Aggrieved Employees would often receive, along  
9 with their hourly rates of pay for their working hours, additional remuneration and/or non-discretionary  
10 bonus pay. Defendants, however, calculated the regular rate of pay for the Class Members and the  
11 Aggrieved Employees without factoring into the regular rate of pay all other non-hourly pay earnings  
12 received during the pay period. As a result, the Class Members and the Aggrieved Employees were  
13 underpaid overtime wages when they worked in excess of eight hours in any workday and/or forty hours  
14 in a workweek when such additional forms of remuneration were earned. By its practice of periodically  
15 requiring the Class Members and the Aggrieved Employees to work in excess of eight hours in a workday  
16 and/or forty hours in a workweek without compensating them at the rate of one and one-half (1½) their  
17 regular rate of pay, Defendants willfully violated the provisions of Labor Code sections 510, 1194, and  
18 1199.

19 83. Pursuant to Labor Code §§ 1194(a) and 1197.1, Plaintiff, on behalf of himself and Class  
20 Members, seeks to recover earned and unpaid overtime wages, interest thereon, as well as awards of  
21 reasonable costs and attorneys' fees, all in amounts subject to proof.

#### 22 **FOURTH CAUSE OF ACTION**

##### 23 ***Failure To Pay for All Hours Worked***

##### 24 **(Cal. Lab. Code §, IWC Wage Order 10-2001)**

25 84. Plaintiff incorporates all of the preceding paragraphs of this Complaint by reference as if  
26 fully set forth herein.

27 85. California Labor Code §223 provides that “[w]here any statute or contract requires an  
28 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while

1 purporting to pay the wage designated by statute or contract.”

2 86. Industrial Welfare Commission (“IWC”) Wage Order No. 10-2001 § 2 provides that  
3 “Employ” means to engage, suffer, or permit to work and “Hours worked” means the time during which  
4 an employee is subject to the control of an employer, and includes all the time the employee is suffered  
5 or permitted to work, whether or not required to do so.

6 87. Defendants systematically did not pay Plaintiff or the class for all time worked as they  
7 were and may still be required to waive their right to overtime compensation in violation of California  
8 law.

### 9 **FIFTH CAUSE OF ACTION**

#### 10 ***Failure To Furnish Accurate Itemized Wage Statements***

#### 11 **(Cal. Lab. Code § 226)**

12 88. Plaintiff incorporates all of the preceding paragraphs of this Complaint by reference as if  
13 fully set forth herein.

14 89. At all material times set forth herein, California Labor Code § 226(a) provides that every  
15 employer shall furnish each of his or her employees an accurate itemized statement in writing showing  
16 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned  
17 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided  
18 that all deductions made on written orders of the employee may be aggregated and shown as one item,  
19 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name  
20 of the employee and his or her social security number, (8) the name and address of the legal entity that is  
21 the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding  
22 number of hours worked at each hourly rate by the employee. The deductions made from payments of  
23 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year,  
24 and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least  
25 three years at the place of employment or at a central location within the State of California.

26 90. Defendants have intentionally and willfully failed to provide Plaintiff and the other Class  
27 Members with complete and accurate wage statements. The deficiencies include but are not limited to  
28 the failure to include the total amount in overtime compensation earned by Plaintiff and the other class

1 members.

2 91. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the  
3 other Class Members have suffered injury and damage to their statutorily protected rights.

4 92. More specifically, Plaintiff and the other Class Members have been injured by  
5 Defendants' intentional and willful violation of California Labor Code § 226(a) because they were denied  
6 both their legal right to receive, and their protected interest in receiving, accurate and itemized wage  
7 statements pursuant to California Labor Code § 226(a).

8 93. Plaintiff and the other Class Members are entitled to recover from Defendants the greater  
9 of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a),  
10 or an aggregate penalty not exceeding four thousand dollars per employee.

11 94. Plaintiff and the other Class Members are also entitled to injunctive relief to ensure  
12 compliance with this section, pursuant to California Labor Code § 226(h).

13 **SIXTH CAUSE OF ACTION**

14 ***Failure To Keep Requisite Payroll Records***

15 **(Cal. Lab. Code § 1174(d))**

16 95. Plaintiff incorporates all of the preceding paragraphs of this Complaint by reference as if  
17 fully set forth herein.

18 96. Pursuant to California Labor Code § 1174(d), an employer shall keep at a central location  
19 in the state or at the plants or establishments at which employees are employed, payroll records showing  
20 the hours worked daily by and the wages paid to, and the number of piece-rate units earned by, and any  
21 applicable piece rate paid to, employees employed at the respective plants or establishments. These  
22 records shall be kept in accordance with rules established for this purpose by the commission, but in any  
23 case, shall be kept on file for not less than two years.

24 97. Defendants have intentionally and willfully failed to keep accurate and complete payroll  
25 records showing the hours worked daily and the wages paid to Plaintiff and the other Class Members.

26 98. As a result of Defendants' violation of California Labor Code § 1174(d), Plaintiff and the  
27 other Class Members have suffered injury and damage to their statutorily protected rights.

28 99. More specifically, Plaintiff and the other Class Members have been injured by

1 Defendant's intentional and willful violation of California Labor Code § 1174(d) because they were  
2 denied both their legal right and protected interest, in having available, accurate and complete payroll  
3 records pursuant to California Labor Code § 1174(d).

4 **SEVENTH CAUSE OF ACTION**

5 ***Waiting Time Penalties***

6 **(Cal. Lab. Code §§ 201-203)**

7 100. Plaintiff incorporates all of the preceding paragraphs of this Complaint by reference as if  
8 fully set forth herein.

9 101. California Labor Code § 201 provides that all of the earned and unpaid wages of an  
10 employee who is discharged become due and payable immediately at the time of discharge.

11 102. California Labor Code § 202 provides that all of the earned and unpaid wages of an  
12 employee who quits become due and payable at the time of quitting if the employee gives at least 72-  
13 hours' notice before quitting, or within 72 hours of quitting if the employee gives less than 72-hours'  
14 notice before quitting.

15 103. California Labor Code § 203 provides that the wages of a terminated employee will  
16 continue as a penalty for up to thirty calendar days if the employer willfully fails to timely pay any earned  
17 and unpaid wages to the employee in the times set forth in Labor Code §§ 201–202.

18 104. By failing to pay Plaintiff earned premium wages, minimum wages, and/or overtime  
19 wages, Defendants failed to timely pay him all earned and unpaid wages in violation of Labor Code §  
20 201 or § 202.

21 105. Plaintiff is informed, believes, and thereon alleges that, by failing to pay formerly  
22 employed Class Members earned premium wages, minimum wages, and/or overtime wages, Defendants  
23 have failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

24 106. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
25 Defendants' failures to pay her and formerly employed Class Members earned and unpaid wages in  
26 violation of Labor Code §§ 201–202 have been willful in that Defendants have had the ability to fully  
27 comply with the requirements set forth in those statutes but have deliberately chosen to maintain policies  
28 and practices with respect to payroll that are incompatible with those requirements.



107. Pursuant to Labor Code § 203, Plaintiff, on behalf of himself and formerly employed Class Members, seek up to thirty days of wages as waiting time penalties in amounts subject to proof.

108. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and formerly employed Class Members, seek awards of reasonable attorneys' fees and costs in amounts subject to proof.

### **EIGHTH CAUSE OF ACTION**

### *Wages Not Timely Paid During Employment*

**(Violation of California Labor Code § 204)**

109. Plaintiff incorporates all of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

110. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

111. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

112. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

113. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

114. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

## NINTH CAUSE OF ACTION

1                                    ***Failure to Indemnify All Necessary Business Expenditures***

2                                    **(Violation of California Labor Code § 2802)**

3            115. Plaintiff incorporates all of the preceding paragraphs of this Complaint by reference as if  
4 fully set forth herein.

5            116. California Labor Code Section 2802 states that employers must “indemnify” an employee  
6 for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
7 of his or her duties, or of his or her obedience to the directions of the employer.” Likewise, Labor Code  
8 section 2804 states that “any contract or agreement, express or implied, made by any employee to waive  
9 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any  
10 employee or his personal representative of any right or remedy to which he is entitled under the laws of  
11 this State.”

12           117. Here, Plaintiff and the other Class Members paid out of pocket for necessary business  
13 expenditures incurred as a direct consequence and requirement of performing their job duties, including  
14 the costs associated with their personal cell phone and uniforms they required to perform their work.  
15 Despite knowing that Plaintiff and the other Class Members incurred these necessary business expenses,  
16 and requiring Plaintiff and the other Class Members to use such items, Defendants did not reimburse  
17 them.

18           118. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such  
19 necessary business expenses, plus interest from the date each incurred such business expenses, plus fees  
20 and costs. (Lab. Code, § 2802, subds. (b), (c).)

21                                    **TENTH CAUSE OF ACTION**

22                                    ***Unfair Competition***

23                                    **(Bus. & Prof. Code § 17200, *Et Seq.*)**

24           119. Plaintiff incorporates all of the preceding paragraphs of this Complaint by reference as if  
25 fully set forth herein.

26           120. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful  
27 and harmful to Plaintiff, other Class Members, to the general public, and Defendants’ competitors.  
28 Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning

1 of Code of Civil Procedure § 1021.5.

2 121. Defendants' activities as alleged herein are violations of California law, and constitute  
3 unlawful business acts and practices in violation of California Business & Professions Code §17200, *et*  
4 *seq.*

5 122. A violation of California Business & Professions Code §§ 17200, *et seq.*, may be  
6 predicated on the violation of any state or federal law. In this instant case, Defendants' policies, and  
7 practices of requiring employees, including Plaintiff and the other Class Members, to work overtime  
8 without paying them proper compensation violate California Labor Code §§ 510 and 1198. Additionally,  
9 by failing to properly compensate Plaintiff and the other Class Member overtime compensation, the wage  
10 statements Defendants provided to Plaintiff and the other Class Members were and are inaccurate on their  
11 face in violation of California Labor Code § 226. Furthermore, the fact that Defendants maintained  
12 inaccurate wage statements violates the provisions of California Labor Code § 1174(d).

13 123. As a result of the herein described violations of California law, Defendants unlawfully  
14 gained an unfair advantage over other businesses.

15 124. Plaintiff and the other Class Members have been personally injured by Defendants'  
16 unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of  
17 money and/or property.

18 125. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and the  
19 other Class Members are entitled to restitution of the wages withheld and retained by Defendants during  
20 a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees  
21 pursuant to California Code of Civil procedure § 1021.5 and other applicable laws; and an award of costs.

22 **ELEVENTH CAUSE OF ACTION**

23 ***Private Attorneys General Act ("PAGA")***

24 **(Violation of California Labor Code § 2699)**

25 126. Plaintiff re-alleges and incorporates all the preceding paragraphs of this Complaint as if  
26 fully set forth herein.

27 127. The Private Attorneys General Act of 2004 ("PAGA") expressly establishes that any  
28 provision of the California Labor Code which provides for a civil penalty to be assessed and collected by

1 the California Labor and Workforce Development Agency (“LWDA”), or any of its departments,  
2 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may  
3 be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself,  
4 and other current or former employees.

5 128. On July 7, 2022, Plaintiff provided written notice to the LWDA and Defendants of the  
6 specific provisions of the Labor Code he contends were violated, and the theories supporting his  
7 contentions. Thus, Plaintiff exhausted his administrative remedies. Plaintiff provided an amended written  
8 notice to the LWDA and Defendants informing them of the additional allegations contained in this  
9 Second Amended Complaint.

10 129. Plaintiff is an aggrieved employee under PAGA because he was employed by Defendants  
11 during the applicable statutory period and suffered one or more of the Labor Code violations set forth in  
12 this complaint. Plaintiff seeks to recover on his behalf, on behalf of the State, and on behalf of all current  
13 and former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable  
14 attorney’s fees and costs in relation to this representative action.

15 130. Plaintiff suffered numerous violations of the California Labor Code while employed by  
16 Defendants including but not limited to violations of California Labor Code Sections 201, 202, 203, 204,  
17 226, 246, 510, 512, 1174, 1194, 1198, 2802, and 2804. These violations of the California Labor Code  
18 give rise to a private right of action under PAGA.

19 131. As a direct and proximate result of Defendant’s conduct as described above, Plaintiff,  
20 individually, and on behalf of other current and former aggrieved employees, requests and is entitled to  
21 recover from Defendants, and each of them, civil penalties, interest, attorneys’ fees and costs pursuant,  
22 including but not limited to:

- 23 a. Penalties under California Labor Code section 2699 in the amount of one hundred dollars  
24 (\$100) for each aggrieved employee per pay period for the initial violation, and two  
25 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent  
26 violation;
- 27 b. Penalties under California Code of Regulations Title 8 section 11040 in the amount of  
28 fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation,

1 and one hundred dollars (\$100) for each aggrieved employee per pay period for each  
2 subsequent violation;

3 c. Penalties under California Labor Code section 210 in addition to, and entirely independent  
4 and apart from, any other penalty provided in the California Labor Code in the amount of  
5 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial  
6 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for  
7 each subsequent violation;

8 d. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for  
9 each aggrieved employee per pay period for the initial violation, and two hundred fifty  
10 dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

11 e. Wages under California Labor Code section 558 in addition to, and entirely independent  
12 and apart from, any other penalty provided in the California Labor Code;

13 f. Any and all additional penalties as provided by the Labor Code and/or other statutes; and  
14 attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any  
15 other applicable statute.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself, and all others similarly situated, pray for relief  
18 and judgment against Defendants as follows:

19 A. A declaratory judgment that the actions, conduct, and practices of the Defendants  
20 complained of herein violated the laws of the United States and the State of California;

21 B. An injunction and order permanently restraining Defendants from engaging in such  
22 unlawful conduct;

23 C. An order that the action be certified as a class action;

24 D. An order that the named Plaintiff herein be appointed class representative;

25 E. An order that counsel for Plaintiff be appointed class counsel;

26 F. An award of damages in an amount to be determined at trial, plus prejudgment interest, to  
27 compensate Plaintiff for all monetary and/or economic hardship, including, but not limited to, the loss of  
28 past and future income, wages, compensation, and other benefits of employment;

1 G. An award of damages in an amount to be determined at trial, plus prejudgment interest, to  
2 compensate Plaintiff for all non-monetary and compensatory harm;

3 H. An award of damages for any and all other monetary and/or non-monetary losses suffered  
4 by Plaintiff in an amount to be determined at trial, plus prejudgment interest;

5 I. An award of civil penalties pursuant to Labor Code section 2699 et seq., for Defendants'  
6 violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5,  
7 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2802 and 2804;

8 J. For reasonable attorneys' fees and costs, including expert witness fees, pursuant to  
9 California CCP §1021.5 and Labor Code section 2699, and any other applicable statute

10 K. For costs of suit herein incurred; and

11 L. For such other and further relief as the Court deems just and proper.

12  
13  
14 Dated: July 21, 2025

MELMED LAW GROUP P.C.

15  
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17   
18 MECHAN N. HIGDAY  
19 Attorneys for Plaintiff, the Putative Class, and the  
20 Aggrieved Employees  
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**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF VENTURA**

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to the action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, August 5, 2025, I served the foregoing document(s) described as:

**SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

By causing a true copy thereof to be served on the following parties and/or individuals:

Aileen M. Hunter

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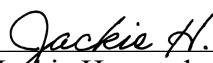
***CLEARWATER SENIOR LIVING, LLC and***

***CSL BERKSHIRE OPERATING COMPANY, LLC***

**[XX]BY ELECTRONIC TRANSMISSION.** Pursuant to CCP section 1010.6(e), I caused the document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 5, 2025, in Los Angeles, California.

  
\_\_\_\_\_  
Jackie Hernandez