

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Xavier L. Woodford (State Bar No. 355326)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com
xavier@ferrarovega.com

Attorneys for Plaintiff Jacqueline McCarroll

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

5/14/2025 3:55:25 PM

Clerk of the Superior Court
By A. Gidron ,Deputy Clerk

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

JACQUELINE MCCARROLL, on behalf of
others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

SILVER TREE HOME HEALTH INC., and
DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU012778C

Hon. Wendy M. Behan
Dept. 66

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages Owed
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Failure to Pay for Authorized Rest
Periods/Non-Productive Time
6. Paid Sick Leave Violations
7. Untimely Payment of Wages
8. Wage Statement Violations
9. Waiting Time Penalties
10. Failure to Reimburse Business Expenses
11. Unfair Competition
12. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: March 11, 2025

1 Plaintiff JACQUELINE MCCARROLL, on behalf of all others similarly situated and the State
2 of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants SILVER TREE
4 HOME HEALTH INC., and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as
5 follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this class and representative action on behalf of herself and similarly
8 situated current and former employees of Defendants for a series of systematic violations of the
9 California Labor Code and IWC Wage Orders.

10 2. Defendants failed to pay Plaintiff and the class members all minimum and overtime
11 wages due to unlawful policies and practices of requiring off-the-clock work and failing to pay for
12 non-productive time.

13 3. Defendants underpaid Plaintiff and the class members’ wages by failing to include all
14 forms of remuneration into the regular rate of pay calculations for overtime, sick pay, and premiums.

15 4. Defendants failed to provide, authorize, and/or permit Plaintiff and the class members
16 to take compliant meal and rest periods to which they were entitled. However, Defendant did not pay
17 Plaintiff and the class members meal or rest period premiums.

18 5. Defendants underpaid sick leave by failing to account for all hours worked by Plaintiff
19 and the class members.

20 6. Defendants failed to reimburse Plaintiff and the class members’ costs incurred for
21 work-related purposes.

22 7. Defendants’ employment policies, practices, and payroll administration systems
23 enabled and facilitated these violations on a company-wide basis with respect to the class members.

24 8. Defendants are further liable for derivative claims for wage statements, untimely
25 payment, and other associated violations.

26 9. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,
27 attorney’s fees and costs.

1 **JURISDICTION & VENUE**

2 10. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
3 California Constitution as the causes of action are premised upon violations of California law.

4 11. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
5 the Superior Court.

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

10 13. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
11 and/or 395.5 because, upon information and belief, Defendants conducted business and committed
12 some of the alleged violations in this County.

13 **PARTIES**

14 **A. Plaintiff Jacqueline McCarroll**

15 14. Plaintiff McCarroll is an individual over 18 years of age who worked for Defendants
16 in California as a non-exempt employee from about October 2023 to Present. Plaintiff worked as a
17 Registered Nurse.

18 15. The State of California, via the Labor and Workforce Development Agency
19 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9
20 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party
21 in interest.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting,*
22 *Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd.* (Feb. 26, 2025,
23 D083400) ___ Cal.Rptr.3d ___ [2025 WL 615064], the PAGA claim is brought exclusively as a
24 representative action and does not include arbitrable claims.

25 **B. Defendants**

26 16. Defendant Silver Tree Home Health Inc. is a California corporation that maintains
27 operations and conducts business throughout the State of California, including in this county.
28

17. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

18. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

19. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

20. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

21. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

22. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

23. The class is ascertainable and shares a well-defined community of interest in this litigation:

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.
- d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.
- e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

24. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

25. Plaintiff and class members worked for Defendants as non-exempt employees and were compensated on an hourly basis.

26. Defendants failed to pay Plaintiff and the class members at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

27. Defendants employed an unlawful policy and practice requiring off-the-clock work. Specifically, Plaintiff and other class members were paid \$85 per patient visit only, regardless of their time spent preparing, traveling, and attending to the patients. Further, if a patient canceled their appointment, Plaintiff and the class members would have to complete work-related tasks for the cancellation, required by Defendants without pay.

28. Additionally, Plaintiff and the class members were required to complete onboarding procedures, attend trainings, and attend meetings while off-the-clock, without compensation. Plaintiff and the class members were only paid \$60 for each training and/or meeting regardless of their time spent at the meeting/training. For example, training paperwork was given to staff to complete on their own time or at a meeting. Moreover, Defendants failed to incorporate a clock-in system to track the employee's time. As a result of this unlawful practice, Plaintiff and the class members were systematically deprived of earned wages.

29. Due to Defendants' unlawful policies requiring off-the-clock work, Defendants failed to pay for all hours worked, resulting in the underpayment of regular wages to Plaintiff and the class members.

30. Defendants committed a similar violation to the one set forth in *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98 by paying employees a flat rate per patient visit and per meeting without separately compensating for the paid rest periods. As a result, Defendants committed a Labor Code violation in each respective pay period and are liable for Labor Code penalties

1 accordingly. As explained above, Defendants did not pay Plaintiff and the class members for non-
2 productive time, such as travel time between patients, charting time, communication time, scheduling
3 time, and any time that they spent for their rest periods. Therefore, Defendants failed to pay for non-
4 productive time and all rest period wages.

5 31. Defendants failed to pay Plaintiff and the class members overtime wages and the lawful
6 rate of pay for overtime hours worked, resulting in unpaid overtime wages.

7 32. As stated above, Defendants regularly failed to compensate Plaintiff and the class
8 members for time worked when they were off-the-clock. When Plaintiff and the class members worked
9 more than 8 hours per day or over 40 hours in one week, these practices resulted in unpaid overtime
10 wages. Plaintiff and the class members regularly worked 10-12 hours per day with no overtime pay.
11 Defendants expected Plaintiff and the class members to correspond with families and patients while
12 not on a patient visit. However, Defendants did not provide or utilize any timekeeping system for their
13 employees and therefore these longer shifts went unrecorded.

14 33. Additionally, Plaintiff and class members earned supplemental remuneration beyond
15 their base wages, which Defendants did not properly factor into the class members' overtime or
16 double-time rates. For example, Plaintiff and the class members frequently earned bonuses for
17 completing certain work-related tasks, among other reasons. To the extent Defendants paid any
18 overtime hours, those were underpaid because Defendants failed to factor bonuses and other forms of
19 remuneration into the regular rate for overtime wages.

20 34. Defendants failed to comply with California's paid sick leave laws with respect to the
21 class members.

22 35. Upon information and belief, Defendants failed to provide Plaintiff and class members
23 with all sick leave accrued. Plaintiff and class members worked off the clock, overtime hours that were
24 not accounted for when calculating an employee's accrued paid sick leave. Moreover, in line with
25 Defendants' policy and practice of failing to include all forms of nondiscretionary income in
26 employees' regular rate of pay, Defendants similarly underpaid sick leave in the same manner
27 Defendants underpaid overtime and premium wages. Therefore, Plaintiff and other class members
28 were not awarded the total accrued sick leave time they had earned.

1 36. Lastly, in direct violation of Labor Code section 246(i), Defendants failed to provide
2 Plaintiff and the class members with “*written notice of the amount of paid sick leave available ... for*
3 *use on either the employee’s itemized wage statement... or in a separate writing provided on the*
4 *designated pay date with the employee’s payment of wages.*” An illustrative example of Defendants’
5 sick pay violation as it pertains to accrual is shown in Plaintiff’s wage statement for the pay period
6 from 11/02/2024 to 11/15/2024. During this pay period, Plaintiff worked well over 30 hours. However,
7 Defendants failed to provide Plaintiff and, on information and belief, other class members with written
8 notice of the amount of paid sick leave available on their wage statements. Instead, the sick leave
9 balance is not indicated anywhere on the wage statements.

10 37. Plaintiff and the class members never received a compliant meal period while working
11 for Defendants. Defendants had an unlawful policy and practice of requiring Plaintiff and other class
12 members to work through their unpaid meal periods. As stated above, Defendants had an unlawful
13 policy of only paying Plaintiff and the class members \$85 per patient visit only. Defendants did not
14 provide Plaintiff or class members with a mechanism to schedule or plan for meal periods. For
15 example, Plaintiff has never taken a meal period while in the field attending to patients. Therefore,
16 Plaintiff and the class members never received their unpaid meal period as required by California Law.

17 38. When Plaintiff and class members suffered deficient meal periods, Defendants did not
18 pay their due meal period premiums. To the extent Defendants paid Plaintiff and class members any
19 meal period premiums, those premiums were underpaid due to the Defendants’ policy and practice of
20 excluding some forms of non-discretionary income, like the bonus payments, from the regular rate of
21 pay.

22 39. Additionally, Plaintiff and the class members were never provided with a compliant
23 rest break. When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiff
24 and other class members a rest period premium in violation of Labor Code section 226.7. Additionally,
25 as discussed above, Defendants did not compensate Plaintiff and the class members for their non-
26 productive time. Plaintiff alleges that she was never offered a complaint rest period and there was no
27 discussion about breaks.

1 40. Defendants maintain a policy and practice of failing to pay Plaintiff and class members
2 their due premiums when the employees suffer deficient rest periods. To the extent Defendants paid
3 Plaintiff and class members any rest period premiums, those premiums were underpaid due to the
4 Defendants' policy and practice of excluding some forms of nondiscretionary income, like the bonus
5 payments, from the regular rate of pay.

6 41. Defendants required Plaintiff and class members to incur costs for work-related
7 purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the class
8 members unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of
9 policy and practice.

10 42. Plaintiff and the class members were required to use their personal cell phones,
11 vehicles, and purchase office supplies, to complete their job duties. For example, Plaintiff used her
12 personal vehicle to drive from location to location for site visits. Plaintiff was also required to answer
13 any phone calls and texts messages to communicate with directors and patients using her personal cell
14 phone. Further, Plaintiff was required to purchase office supplies such as ink and paper to complete
15 work-related tasks. Additionally, Plaintiff and the class members were required to purchase uniforms
16 for which they were never reimbursed. Plaintiff and the class members were also required to use their
17 home internet for work-related purposes, without reimbursement.

18 43. Defendants did not reimburse Plaintiff and other class members for any expenses
19 incurred from obtaining and using their cell phones, office supplies, uniforms, and gas mileage that
20 were necessary for the job.

21 44. These violations create derivative liability for failure to timely pay all wages owed each
22 payday or upon separation of employment.

23 45. Defendants failed to provide accurate itemized wage statements to the class members
24 each pay period as a result of the policies and practices set forth in this notice. Defendants violated
25 Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages
26 earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate
27 reflection, and recording of "gross wages earned" on those wage statements.

46. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

47. Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time Plaintiff and other class members worked during their meal periods.

48. Plaintiff and other class members cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other class members with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

49. Because of these policies and practices set forth above, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES OWED

Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiff and Class Members Against All Defendants)

50. All outside paragraphs of this Complaint are incorporated into this section.

51. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 200, 218, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer’s failure to pay all minimum wages (plus liquidated damages). In addition to minimum wages, Labor Code § 200 states that “‘wages’ includes all amounts for labor performed by employees of every description, whether the amount is

1 fixed or ascertained by the standard of time, task, piece, commission basis, or other method of
2 calculation.”

3 52. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
4 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
5 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
6 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
7 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
8 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
9 Code § 1194.2.

10 53. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
11 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
12 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
13 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
14 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2,
15 218.6 and any other applicable statutes.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY ALL OVERTIME WAGES**

18 **Violation of Labor Code §§ 510 and 1194**

19 54. All outside paragraphs of this Complaint are incorporated into this section.

20 55. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
21 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
22 wages all overtime hours worked, and which further provide a private right of action for an employer’s
23 failure to pay all overtime compensation for overtime hours worked.

24 56. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
25 less than one and one-half times their respective “regular rate of pay” for all hours worked in excess
26 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
27 work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours
28 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for

1 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
2 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

3 57. Plaintiff and class members are entitled to recover the full amount of the unpaid
4 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
5 extent permitted by law.

6 **THIRD CAUSE OF ACTION**

7 **MEAL PERIOD VIOLATIONS**

8 **Violation of Labor Code §§ 226.7 and 512**

9 58. All outside paragraphs of this Complaint are incorporated into this section.

10 59. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
11 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
12 meal period premiums in lieu thereof), and which further provide a private right of action for an
13 employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
14 regular rate of compensation.

15 60. Defendants willfully failed in their affirmative obligation to consistently provide
16 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
17 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
18 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
19 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods”
20 sections of the applicable orders).

21 61. Further, Defendants willfully failed in their affirmative obligation to consistently pay
22 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
23 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
24 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the
25 applicable orders).

26 62. Plaintiff and class members are entitled to recover the full amount of the meal period
27 premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to
28 the extent permitted by law.

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **Violation of Labor Code §§ 226.7 and 516**

4 63. All outside paragraphs of this Complaint are incorporated into this section.

5 64. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
6 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
7 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
8 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
9 regular rate of compensation.

10 65. Defendants willfully failed in their affirmative obligation to consistently authorize and
11 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten
12 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
13 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
14 applicable orders).

15 66. Further, Defendants willfully failed in their affirmative obligation to consistently pay
16 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
17 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
18 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PAY FOR AUTHORIZED REST PERIODS/NON-PRODUCTIVE TIME**

21 67. All outside paragraphs of this Complaint are incorporated into this section.

22 68. Because Plaintiff and class members were not separately compensated for rest periods
23 (a rate required by statute) and non-productive time, Plaintiff and class members are owed wages for
24 this time.¹

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¹ See *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98; *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

69. The IWC Wage Orders state Plaintiff and class members must be paid for all “hours worked” for time they are “subject to the control of the employer, and includes all the time the employee is suffered or permitted to work.” Cal. Code Regs., tit. 8, § 11040, subd. 2(k).

70. The IWC Wage Orders state rest periods are “hours worked for which there will be no deduction from wages.” Cal. Code Regs., tit. 8, § 11040, subd. 12(a).

71. Labor Code section 226.2 applies to employees who are compensated in whole, or in part, on a piece-rate basis. Section 226.2(a)(1) requires employers to compensate employees for “rest and recovery periods and other non-productive time spent separate from any piece rate compensation.”

72. Non-productive time must be compensated at a rate no less than the applicable state or local minimum wage. Cal. Lab. Code § 226.2(a)(4).

73. Rest and recovery periods must be compensated the *higher* of (1) an average hourly rate taken by dividing an employee’s total compensation for the workweek (exclusive of overtime and rest and recovery compensation) by the employee’s total hours worked or (2) the applicable minimum wage. Cal. Lab. Code § 226.2(a)(3)(A).

74. Section 226.2 expressly requires that any employees paid in whole or in part on a piece rate basis must receive at least minimum wage for all hours worked as well as any required overtime compensation.

75. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked (including all non-productive time) in violation of Labor Code sections 226.2, 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect.

76. Defendants also failed in their affirmative obligation to pay Plaintiff and class members for rest periods at the rate required by section 226.2(a)(3)(A), resulting in unpaid wages to Plaintiff and class members.

77. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of minimum, regular and overtime, and premium wages in amounts to be determined at trial. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages

1 in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest,
2 attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194
3 and 1194.2.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

6 **Violation of Labor Code §§ 200, 218, 246 *et seq.***

7 78. All outside paragraphs of this Complaint are incorporated into this section.

8 79. Defendants knowingly and intentionally failed in their affirmative obligation to pay
9 sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246
10 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law.
11 (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized
12 that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her
13 compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

14 80. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1,
15 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class
16 members, govern how Defendants were required to calculate paid sick leave.

17 81. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one
18 of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their
19 sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the
20 regular rate of pay and/or calculated based on total wages earned).

21 82. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
22 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19
23 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate in
24 violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

25 83. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class
26 members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

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90. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiff and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

91. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

92. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

NINTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq.*

93. All outside paragraphs of this Complaint are incorporated into this section.

94. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

95. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

96. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

4 97. All outside paragraphs of this Complaint are incorporated into this section.

5 98. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a
6 reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them
7 in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

8 99. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
9 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class
10 members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 2802.

13 **ELEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **Violation of Business and Professions Code §§ 17200 *et seq.***

16 100. All outside paragraphs of this Complaint are incorporated into this section.

17 101. Defendants have engaged and continue to engage in unfair and/or unlawful business
18 practices in the State of California in violation of California Business and Professions Code § 17200
19 by committing the foregoing wage and hour violations alleged throughout this Complaint.

20 102. Defendants' dependence on these unfair and/or unlawful business practices deprived
21 Plaintiff and continue to deprive other class members of compensation to which they are legally
22 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
23 Defendants over competitors who have been and/or are currently employing workers in compliance
24 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
25 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

26 103. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
27 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
28

1 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
2 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

3 104. Plaintiff does not have an adequate remedy at law for past or future violations, to the
4 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
5 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
6 violations do not provide a private right of action.

7 105. Plaintiff and class members are entitled to injunctive relief against Defendants,
8 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
9 an ownership interest and to prevent future damage and the public interest under Business and
10 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
11 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
12 § 1021.5.

13 **TWELFTH CAUSE OF ACTION**

14 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

15 **Violation of Labor Code §§ 2698 *et seq.***

16 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

17 106. All outside paragraphs of this Complaint are incorporated into this section.

18 107. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
19 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
20 codified as Labor Code section 2698 *et seq.*:

- 21 a. All current and former non-exempt employees who worked for Defendants in
22 California at any time from one year prior to the postmark date of the initial
23 PAGA notice through date of trial.

24 108. Plaintiff reserves the right to amend, supplement, or add to this description of the
25 aggrieved employees, according to proof.

26 109. The State of California, via the Labor and Workforce Development Agency
27 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
28

1 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”])

3 110. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
4 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
5 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
6 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
7 action brought by an aggrieved employee on behalf of the employee and other current or former
8 employees against whom a violation of the same provision was committed pursuant to the procedures
9 specified in Section 2699.3. “

10 111. Any allegations regarding violations of the IWC Wage Orders are enforceable as
11 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
12 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

13 112. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
14 penalties under the PAGA.

15 113. On or about **March 6, 2025**, Plaintiff paid the requisite PAGA filing fee and provided
16 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
17 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
18 violations.

19 114. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
20 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
21 forth herein (the “PAGA notice”).

22 115. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
23 written PAGA notice from the LWDA.

24 116. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
25 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
26 providing a description of any actions taken to cure the alleged violations.

27 117. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
28 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate

the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

118. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods.*** Violation of Labor Code §§ 226.2; IWC Wage Orders.
- c. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- d. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

119. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties and liquidated damages;
- f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- g. For restitution and injunctive relief;
- h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5.;
- i. For recovery of damages in amount according to proof;
- j. For all recoverable pre- and post-judgment interest;
- k. For this action to be maintained as a representative action under the PAGA;
- l. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- o. For such other relief the Court deems just and proper.

Dated: May 14, 2025

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Xavier L. Woodford

Attorneys for Plaintiff Jacqueline McCarroll

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

March 6, 2025

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- *Electronic Return Receipt* -

Silver Tree Home Health Inc.
810 Los Vallecitos Blvd., Ste 205
San Marcos, California 92069

- *PAGA Notice & Filing Fee* -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **JACQUELINE MCCARROLL** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

SILVER TREE HOME HEALTH INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Registered Nurse from about October 2023 to Present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates

that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

Defendants employed an unlawful policy and practice requiring off-the-clock work. Specifically, Plaintiff and other aggrieved employees were paid \$85 per patient visit only, regardless of their time spent preparing, traveling, and attending to the patients. Further, if a patient canceled their appointment, Plaintiff and the aggrieved employees would have to complete work-related tasks for the cancellation, required by Defendants without pay.

Additionally, Plaintiff and the aggrieved employees were required to complete onboarding procedures, attend trainings, and attend meetings while off-the-clock, without compensation. Plaintiff and the aggrieved employee were only paid \$60 for each training and/or meeting regardless of their time spent at the meeting/training. For example, training paperwork was given to staff to complete on their own time or at a meeting. Moreover, Defendants failed to incorporate a clock in system to track the employees time. As a result of this unlawful practice, Plaintiff and the aggrieved employees were systematically deprived of earned wages.

Due to Defendant’s unlawful policies of requiring off-the-clock work, Defendants failed to pay for all hours worked, resulting in the underpayment of regular wages to Plaintiff and the aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods
Violation of Labor Code §§ 226.2; IWC Wage Orders

Defendants violated Labor Code sections 226.2 and the “Hours and Days of Work,” “Minimum Wages,” and “Rest Periods” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 226.2(a)(1) also requires employers to compensate employees for “rest and recovery periods and other non-productive time spent separate from any piece rate compensation.” Under Labor Code section 226.2(a)(3), rest and recovery periods must be paid at an hourly rate that is no less than the higher of (i) an average hourly rate taken by dividing an employee’s total compensation for the workweek (exclusive of overtime and rest and recovery compensation) by the employee’s total hours worked and (ii) the applicable minimum wage. Under Labor Code section 226.2(a)(4), other nonproductive time must be paid at an hourly rate that is no less than the applicable minimum wage.

Furthermore, the “Hours and Days of Work,” “Minimum Wages,” and “Rest Periods” sections of the applicable IWC Wage Orders—as addressed in *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98—require employers to separately compensate all employees, not just piece-rate employees, for all hours worked, including rest periods and nonproductive time, to comply with California’s minimum wage obligations.

Defendants committed a similar violation to the one set forth in *Vaquero*, paying employees a flat rate per patient visit and per meeting without separately compensating for the paid rest periods. As a result, Defendants committed a Labor Code violation in each respective pay period and are liable for Labor Code penalties accordingly. As explained above, Defendants did not pay Plaintiff and the aggrieved employees for non-productive time, such as travel time between patients, charting time, communication time, scheduling time, and any time that they spent for rest periods. Therefore, Defendants failed to pay for non-productive time and all rest period wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As stated in the “Unpaid Hours Worked” section above, Defendants regularly failed to compensate Plaintiff and the aggrieved employees for time worked when they were off-the-clock. When Plaintiff and the aggrieved employees worked more than 8 hours per day or over 40 hours in one week, these practices resulted in unpaid overtime wages. Plaintiff and the aggrieved employees regularly worked 10-12 hours per day with no overtime pay. Defendants expected Plaintiff and the aggrieved employees to correspond with families and patient while not on a patient visit. However, Defendants did not provide or utilize any timekeeping system for its employees and therefore these longer shifts went unrecorded.

Additionally, Plaintiff and aggrieved employees earned supplemental remuneration beyond their base wages, which Defendants did not properly factor into the aggrieved employees’ overtime or double-time rates. For example, Plaintiff and the aggrieved employees frequently earned bonuses for completing certain work-related tasks, among other reasons. To the extent Defendants paid any overtime hours, those were underpaid because Defendants failed to factor bonuses and other forms of remuneration into the regular rate for overtime wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice

provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees.

Upon information and belief, Defendants failed to provide Plaintiff and aggrieved employees with all sick leave accrued. Plaintiff and aggrieved employees worked off the clock, overtime hours that were not accounted for when calculating an employee’s accrued paid sick leave. Moreover, in line with Defendants’ policy and practice of failing to include all forms of nondiscretionary income in employees’ regular rate of pay, Defendants similarly underpaid sick leave in the same manner Defendants underpaid overtime and premium wages. Therefore, Plaintiff and other aggrieved employees were not awarded the total accrued sick leave time they had earned.

Lastly, in direct violation of Labor Code section 246(i), Defendants failed to provide Plaintiff and the aggrieved employees with “*written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.*” An illustrative example of Defendants’ sick pay violation as it pertains to accrual is shown below:

PERSONAL AND CHECK INFORMATION			EARNINGS					WITHHOLDINGS	
Jacqueline L. McCarroll			BASIS OF DESCRIPTION		HRS/UNITS	RATE	CURRENT (\$)	YTD	YTD (\$)
[REDACTED]			PAY					HRS/UNITS	
[REDACTED]			Hourly		9.0000	85.0000	765.00	639.5000	58050.00
Employee ID: 35			Hourly Units		2.0000	170.0000	340.00	2.0000	340.00
			Bonus					188.0000	1840.00
			Bonus Units		11.0000		30.00	11.0000	155.00
			Total Hours		9.0000			739.5000	
Pay Period: 11/02/24 to 11/15/24			Total Hrs Worked						
Check Date: 11/22/24 Check #: Paid in Cash			Gross Earnings				1135.00		60385.00
NET PAY ALLOCATIONS			DESCRIPTION		FILING STATUS		CURRENT (\$)		YTD (\$)
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	GS						
Check Amount	0.00	0.00	Social Security				70.37		3743.87
Chkg 320	1035.69	53663.17	Medicare				16.45		875.58
NET PAY	1035.69	53663.17	Fed Income Tax		H No Withholding				1138.41
			CA Income Tax		H 0 0 No				299.67
			CA Disability				12.49		664.30
			TOTAL				99.31		6721.83
NET PAY							THIS PERIOD (\$)		YTD (\$)
							1035.69		53663.17

Extract of Plaintiff's Wage Statement for the pay period from 11/02/2024 to 11/15/2024.

During this pay period, Plaintiff worked well over 30 hours. However, Defendants failed to provide Plaintiff and, on information and belief, other aggrieved employees with written notice of the amount of paid sick leave available on their wage statements. Instead, the sick leave balance is not indicated anywhere on the wage statements.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and the aggrieved employees never received a compliant meal period while working for Defendants. Defendants had an unlawful policy and practice of requiring Plaintiff and other aggrieved employees to work through their unpaid meal periods. As stated in the 'Unpaid Hours Worked' section above Defendants had an unlawful policy of only paying Plaintiff and the aggrieved employees \$85 per patient visit only. Defendants did not provide Plaintiff or aggrieved employees with a mechanism to schedule or plan for meal periods. For example, Plaintiff has never taken a meal period while in the field attending to patients. Therefore, Plaintiff and the aggrieved employees never received their unpaid meal period as required by California Law.

When Plaintiff and aggrieved employees suffered deficient meal periods, Defendants did not pay their due meal period premiums. To the extent Defendants paid Plaintiff and aggrieved employees any meal period premiums, those premiums were underpaid due to the Defendants' policy and practice of excluding some forms of non-discretionary income, like the bonus payments, from the regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Similar to the "Meal Period Premium" section above, Plaintiff and the aggrieved employees were never provided with a compliant rest break. When Defendants did not provide compliant rest periods, Defendants failed to pay Plaintiff and other aggrieved employees a rest period premium in violation of Labor Code section 226.7. Additionally, as discussed in the minimum wage section above, Defendants did not compensate Plaintiff and the aggrieved employees for their non-productive time. Plaintiff alleges that she was never offered a compliant rest period and there was no discussion about breaks.

Defendants maintain a policy and practice of failing to pay Plaintiff and aggrieved employees their due premiums when the employees suffer deficient rest periods. To the extent Defendants paid Plaintiff and aggrieved employees any rest period premiums, those premiums were underpaid due to the Defendants' policy and practice of excluding some forms of nondiscretionary income, like the bonus payments, from the regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendants failed to pay overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties

for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked during their meal periods.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or

should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Plaintiff and the aggrieved employees were required to use their personal cell phones, vehicles, and purchase office supplies, to complete their job duties. For example, Plaintiff used her personal vehicle to drive from location to location for site visits. Plaintiff was also required to answer any phone calls and texts messages to communicate with directors and patients using her personal cell phone. Further, Plaintiff was required to purchase office supplies such as ink and paper to complete work-related tasks. Additionally, Plaintiff and the aggrieved employees were required to purchase uniforms for which they were never reimbursed for. Plaintiff and the aggrieved employees were also required to use their home internet for work-related purposes, without reimbursement.

Defendants did not reimburse Plaintiff and other aggrieved employees for any expenses incurred from obtaining and using their cell phones, office supplies, uniforms, and gas mileage that were necessary for the job.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys’ Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda

and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Xavier L. Woodford

Cc Plaintiff Jacqueline McCarroll

Maddie Tabrizi – HR Representative for Defendants
maddiesilvertreehomehealth@yahoo.com