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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

ENVY AZEVEDO, an individual, on behalf
of herself and others similarly situated,

PLAINTIFF,

v.

TULARE NURSING & REHABILITATION
HOSPITAL, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. VCU293325

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**SECOND AMENDED REPRESENTATIVE
ACTION COMPLAINT**

1. Penalties Pursuant to Labor Code §2699,
et seq.

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
07/22/2024

By: Kim Anaya,
Deputy Clerk

1 Plaintiff ENVY AZEVEDO, on behalf of herself, and the people of the State of California
2 and as an “aggrieved employee” under Labor Code Private Attorneys General Act of 2004, § 2699,
3 *et seq.* (hereafter “PAGA”), complains of Defendants TULARE NURSING &
4 REHABILITATION HOSPITAL, INC. (“THI”) and TULARE HEALTHCARE & WELLNESS
5 CENTER, LP (“THW” and collectively, “Defendants”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Representative Action, pursuant to Labor Code § 2699, *et seq.*, on behalf
9 of the following individuals:

10 All persons who are employed or have been employed as an hourly
11 employee by Tulare Nursing & Rehabilitation Hospital, Inc. and
12 Tulare Healthcare & Wellness, LP, in the State of California who
13 worked one or more pay periods since one (1) year prior to the date
14 of Plaintiff’s notice letters to the Labor & Workforce Development
15 Agency (“LWDA”) and continuing to the present. (“aggrieved
16 employees”)

17 2. For at least one (1) year prior to the date of the letters sent to the Labor Workforce
18 and Development Agency (“LWDA”) and Defendants on September 14, 2022 and September 23,
19 2022 giving notice of this claim pursuant to PAGA and continuing to the present, Defendants have
20 failed to properly comply with Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
21 1174.5, 1194.2, 1198, 1199, 2802 and IWC Wage Order 5.

22 3. Defendants maintained a pattern and practice of not paying Plaintiff and the
23 aggrieved employees for all hours worked, including minimum, straight time, and overtime wages.
24 Defendants required Plaintiff and the aggrieved employees to work “off-the-clock,”
25 uncompensated, by, for example, requiring Plaintiff and the aggrieved employees to perform work
26 after during uncompensated meal periods and/or requiring Plaintiff and the aggrieved employees
27 to perform work after clocking out for the workday. Some of this unpaid work should have been
28 paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain
accurate records of the hours Plaintiff and the aggrieved employees worked.

4. Defendants wrongfully failed to provide Plaintiff and the aggrieved employees with
their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required

1 by law. Defendants also continued to assert control over Plaintiff and the aggrieved employees by,
2 among other things, requiring, pressuring, or encouraging them to perform work tasks which could
3 not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff
4 and the aggrieved employees permission to take a meal period under the conditions required by
5 law, and without properly compensating Plaintiff and the aggrieved employees for meal periods
6 that were not provided as required by law. Defendants also never informed Plaintiff of her right
7 to, nor permitted her to take, a second meal period when Plaintiff worked at least ten hours of work
8 in a workday and otherwise unlawfully pressured her to waive such breaks. Accordingly,
9 Defendants' pattern and practice were not to provide meal periods to Plaintiff and the aggrieved
10 employees in compliance with California law.

11 5. Defendants failed to maintain accurate records of hours worked and all meal
12 periods taken or missed by Plaintiff and the aggrieved employees. Defendants' failure to provide
13 and maintain records required by the California Labor Code and applicable IWC Wage Orders
14 deprived Plaintiff and the aggrieved employees the ability to know, understand and question the
15 accuracy and frequency of meal periods, and the accuracy of their hours worked stated in
16 Defendants' records. Therefore, Plaintiff and the aggrieved employees had no way to dispute the
17 resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to
18 Defendants.

19 6. Defendants have wrongfully failed to authorize and permit Plaintiff and the
20 aggrieved employees to take legally compliant rest periods in a manner required by law.
21 Defendants also regularly required Plaintiff and the aggrieved employees to work in excess of four
22 consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute,
23 uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours),
24 and without properly compensating Plaintiff and the aggrieved employees for rest periods that
25 were not authorized or permitted. Instead, among other things, Defendants continued to assert
26 control over Plaintiff and the aggrieved employees by requiring, pressuring, or encouraging them
27 to perform work tasks which could not be completed without working in lieu of taking mandatory
28 rest periods, and by denying Plaintiff and the aggrieved employees permission to take a rest period

1 under the conditions required by law. Accordingly, Defendants' pattern and practice was to not
2 authorize and permit Plaintiff and the aggrieved employees to take rest periods in compliance with
3 California law.

4 7. Defendants have failed to reimburse Plaintiff and the aggrieved employees the cost
5 of using their personal cell phones and tools for business related purposes. Defendants required
6 that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell
7 phones while working, and this was necessary to perform their job duties. These cell phones were
8 not provided by Defendants, and Defendants failed to reimburse Plaintiff and the aggrieved
9 employees for the costs associated with using these personal cell phones.

10 8. Defendants systematically failed and refused to pay the employees all wages due,
11 and failed to pay those wages twice a month, in that employees were not paid all wages for all
12 meal periods not provided by Defendants, all wages for all rest periods not authorized and
13 permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe
14 employees the legally required wages not paid, and Plaintiff and the aggrieved employees suffered
15 damages in those amounts.

16 9. Defendants failed to furnish Plaintiff and the aggrieved employees with accurate,
17 itemized wage statements showing all applicable hourly rates, and all gross and net wages earned
18 (including correct hours worked, correct wages for meal periods that were not provided in
19 accordance with California law, and correct wages for rest periods that were not authorized and
20 permitted to take in accordance with California law).

21 10. Defendants have failed to pay all wages due at the time of termination or resignation
22 to Plaintiff and the aggrieved employees.

23 11. For at least one (1) year prior to the date of the letters sent to the Labor Workforce
24 and Development Agency ("LWDA") and Defendants giving notice of the claims pursuant to
25 PAGA and continuing to the present, Defendants have violated Labor Code provisions, as detailed
26 below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved
27 employees presently or formerly employed by Defendants during the liability period as defined in
28 her PAGA notice letters (*see* Exhibit "1" and "3"), brings this representative action pursuant to

1 Labor Code § 2699, *et seq.* seeking penalties for Defendants' violations of Labor Code §§ 201,
2 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1174.5, 1194.2, 1198, 1199, 2802 and IWC Wage
3 Order 5.

4 II.

5 JURISDICTION AND VENUE

6 12. This Court has subject matter jurisdiction over all causes of action asserted herein
7 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
8 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
9 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
10 State of California or is subject to adjudication in the courts of the State of California.

11 13. This Court has personal jurisdiction over Defendants because Defendants have
12 caused injuries in the County of Tulare and the State of California through their acts, and by their
13 violation of the California Labor Code, California state common law.

14 14. At all times set forth herein, Defendant TULARE NURSING &
15 REHABILITATION HOSPITAL, INC. is and was, based upon information and belief, a
16 California corporation doing business in Tulare County and the State of California with its
17 California address at 9715 W Grove Ave, Visalia, CA 93291. At all relevant times, Defendant
18 THI employed Plaintiff in the State of California.

19 15. At all times set forth herein, Defendant TULARE HEALTHCARE & WELLNESS
20 CENTER, LP is and was, based upon information and belief, a California limited partnership doing
21 business in Tulare County and the State of California with its California address at 680 E. Meritt
22 Ave., Tulare, CA 93274. At all relevant times, THW employed Plaintiff in the State of California.

23 16. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
24 Civil Procedure § 395. Defendants operate within California and does business within Tulare
25 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all aggrieved
26 employees within the State of California and the county of Tulare.

27 17. Plaintiff files this amended complaint adding claims for penalties pursuant to Labor
28 Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C).

III.
PARTIES

A. PLAINTIFF

18. Plaintiff ENVY AZEVEDO is a resident of California.

19. Upon information and belief, Plaintiff and all aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal. Code Regs. § 11050.)

20. Plaintiff and all aggrieved employees as defined in her notice letters to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

21. Defendant TULARE NURSING & REHABILITATION HOSPITAL, INC. is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 9715 W Grove Ave, Visalia, CA 93291. Upon information and belief, THI employed Plaintiff and other aggrieved employees as hourly employees within California. THI has done and does business throughout the State of California.

22. Defendant TULARE HEALTHCARE & WELLNESS CENTER, LP is and was, based upon information and belief, a California limited partnership doing business in Tulare County and the State of California with its California address at 680 E. Meritt Ave., Tulare, CA 93274. Upon information and belief, THW employed Plaintiff and other aggrieved employees as hourly employees within California. THW has done and does business in the State of California.

23. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

25. Furthermore, Defendants acted in all respects as the employers or joint employers of the aggrieved employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of the aggrieved employees, or suffered or permitted the aggrieved employees to work, or engaged, thereby creating a common law employment relationship, with the aggrieved employees. Therefore, Defendants, and each of them, employed or jointly employed the aggrieved employees.

IV.

FACTUAL BACKGROUND

26. Plaintiff and the aggrieved employees are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendants. Defendants hire employees who work as hourly employees who are paid on an hourly basis.

27. Upon information and belief, Plaintiff and the aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal. Code of Regs. § 11050).

28. On a regular and consistent basis, for all aggrieved employees employed by Defendants, Defendants have failed to comply with Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1174.5, 1194.2, 1198, 1199, 2802, and IWC Wage Order 5 as alleged herein.

V.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND ALL AGGRIEVED EMPLOYEES
AGAINST ALL DEFENDANTS FOR PENALTIES PURSUANT TO LABOR CODE §
2699, ET SEQ. FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 226,

226.7, 510, 512, 1194, 1174.5, 1194.2, 1198, 1199, 2802, AND IWC WAGE ORDER 5

29. Plaintiff, on behalf of herself and the Aggrieved employees, realleges and incorporates by reference all previous paragraphs.

30. For at least one (1) year prior to the date of the letters sent to the LWDA and Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendants maintained a pattern and practice of not paying Plaintiff and the aggrieved employees for all hours worked, including minimum, straight time, and overtime wages. Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

31. Defendants required Plaintiff and the aggrieved employees to work “off-the-clock,” uncompensated, by, for example, requiring Plaintiff and the aggrieved employees to perform work after during uncompensated meal periods and/or requiring Plaintiff and the aggrieved employees to perform work after clocking out for the workday. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff and the aggrieved employees worked.

32. For at least one (1) year prior to the date of the letters sent to the LWDA and Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendants failed to provide complaint meal breaks. Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the end of the fifth hour of work in a workday, and to allow

1 employees to take their second 30-minute meal period no later than the end of the tenth hour of
2 work in a workday. Further, employees are entitled to be paid one hour of additional wages for
3 each workday they were not provided with a required meal period(s).

4 33. Defendants wrongfully failed to provide Plaintiff and the aggrieved employees with
5 their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required
6 by law. Defendants also continued to assert control over Plaintiff and the aggrieved employees by,
7 among other things, requiring, pressuring, or encouraging them to perform work tasks which could
8 not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff
9 and the aggrieved employees permission to take a meal period under the conditions required by
10 law, and without properly compensating Plaintiff and the aggrieved employees for meal periods
11 that were not provided as required by law. Defendants also never informed Plaintiff of her right
12 to, nor permitted her to take, a second meal period when Plaintiff worked at least ten hours of work
13 in a workday and otherwise unlawfully pressured her to waive such breaks. Accordingly,
14 Defendants' pattern and practice was not to provide meal periods to Plaintiff and the aggrieved
15 employees in compliance with California law.

16 34. For at least one (1) year prior to the date of the letters sent to the LWDA and
17 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
18 Defendants failed to maintain accurate records of hours worked and all meal periods taken or
19 missed by Plaintiff and the aggrieved employees. Pursuant to California Labor Code § 1174.5, any
20 person, including any entity, employing labor who willfully fails to maintain accurate and
21 complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5.
22 Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing
23 when the employee begins and ends each work period. Meal periods and total hours worked daily
24 shall also be recorded.

25 35. Defendants did not maintain accurate records of hours worked and all meal periods
26 taken or missed by Plaintiff and all aggrieved employees. Defendants' failure to provide and
27 maintain records required by the California Labor Code and applicable IWC Wage Orders
28 deprived Plaintiff and the aggrieved employees the ability to know, understand and question the

1 accuracy and frequency of meal periods, and the accuracy of their hours worked stated in
2 Defendants' records. Therefore, Plaintiff and the aggrieved employees had no way to dispute the
3 resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to
4 Defendants.

5 36. For at least one (1) year prior to the date of the letters sent to the LWDA and
6 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
7 Defendants failed to provide compliant rest breaks. Employers are required by California law to
8 authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major
9 fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time
10 is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize
11 rest breaks as so required is itself a violation of California's rest break laws.

12 37. Defendants have wrongfully failed to authorize and permit Plaintiff and the
13 aggrieved employees to take legally compliant rest periods in a manner required by law.
14 Defendants also regularly required Plaintiff and the aggrieved employees to work in excess of four
15 consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute,
16 uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours),
17 and without properly compensating Plaintiff and the aggrieved employees for rest periods that
18 were not authorized or permitted. Instead, among other things, Defendants continued to assert
19 control over Plaintiff and the aggrieved employees by requiring, pressuring, or encouraging them
20 to perform work tasks which could not be completed without working in lieu of taking mandatory
21 rest periods, and by denying Plaintiff and the aggrieved employees permission to take a rest period
22 under the conditions required by law. Accordingly, Defendants' pattern and practice was to not
23 authorize and permit Plaintiff and the aggrieved employees to take rest periods in compliance with
24 California law.

25 38. For at least one (1) year prior to the date of the letters sent to the LWDA and
26 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
27 Defendants have failed to reimburse Plaintiff and the aggrieved employees the cost of using their
28 personal cell phones for business related purposes. Labor Code § 2802 provides that an employer

1 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
2 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
3 the directions of the employer, even though unlawful, unless the employee, at the time of obeying
4 the directions, believed them to be unlawful.

5 39. Defendants required that Plaintiff and the aggrieved employees be available by cell
6 phone and answer/use their cell phones while working, and this was necessary to perform their job
7 duties. These cell phones were not provided by Defendants, and Defendants failed to reimburse
8 Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

9 40. For at least one (1) year prior to the date of the letters sent to the LWDA and
10 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
11 Defendants failed to pay timely wages to its employees. Labor Code § 204 requires employers to
12 pay employees all earned wages two times per month. Throughout the period applicable to this
13 cause of action, employees were entitled to be paid twice a month at their regular rates, including
14 all meal period premium wages owed, rest period premium wages owed, and wages owed for
15 overtime hours worked.

16 41. Defendants systematically failed and refused to pay the employees all wages due,
17 and failed to pay those wages twice a month, in that employees were not paid all wages for all
18 meal periods not provided by Defendants, all wages for all rest periods not authorized and
19 permitted by Defendants, and all wages for all hours worked. As a result, Defendants owes
20 employees the legally required wages not paid, and Plaintiff and the aggrieved employees suffered
21 damages in those amounts.

22 42. For at least one (1) year prior to the date of the letters sent to the LWDA and
23 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
24 Defendants failed to issue accurate itemized wage statements. Labor Code § 226(a) provides that
25 every employer shall furnish each of his or her employees an accurate itemized wage statement in
26 writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
27 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
28 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made

on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Labor Code § 226(e)(2)(B)(iii).)

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

44. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* use of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1174.5, 1194.2, 1198, 1199, 2802; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050, which call for civil penalties.

45. Plaintiff brings this representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by TULARE HEALTHCARE & WELLNESS CENTER, LP and TULARE NURSING & REHABILITATION HOSPITAL, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. ("aggrieved employees").

46. Plaintiff also brings a claim on behalf of herself and other aggrieved employees for violation of Labor Code §§226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendants. Defendants refused to provide the requested documentation in violation of these statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §§226 and 1198.5.

1 47. For each such penalty, Plaintiff and the aggrieved employees are entitled to
2 penalties in an amount to be shown at trial, subject to the following formula:

3 a. \$100 for the initial violation per employee per pay period.

4 b. \$200 for each subsequent violation per employee per pay period.

5 48. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
6 twenty-five percent (25%) to the affected employees.

7 49. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded her notice letters to the
8 LWDA¹ and mailed a letter by certified mail to Defendants' entity addresses, as proscribed by the
9 Code on September 14, 2022 and September 23, 2022, describing Defendants' conduct in violation
10 of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1174.5, 1194.2, 1198, 1199,
11 2802, and IWC Wage Order 5. (*see* Exhibit "1." And "3".) Plaintiff also obtained an e-filing
12 confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2").

13 50. As no letter evidencing the LWDA's intention to investigate was received by
14 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
15 action as though the LWDA had not chosen to investigate pursuant to Labor Code
16 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the Second
17 Amended Representative Action Complaint immediately.

18 **RELIEF REQUESTED**

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

20 1. For penalties under Labor Code § 2699, *et seq.* for Plaintiff and all other aggrieved
21 employees for Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510,
22 512, 1194, 1174.5, 1194.2, 1198, 1199, 2802, and IWC Wage Order 5;

23 2. An award providing for payment of costs of suit;

24 3. An award of attorneys' fees; and

25 4. Such other and further relief as this Court may deem proper and just.

26 **DEMAND FOR JURY TRIAL**

27

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.
2

3 DATED: July 18, 2024

KINGSLEY SZAMET & LY; WILSHIRE LAW
FIRM, PLC

5 By: 
6

Liane Katzenstein Ly

John G. Yslas

Aram Boyadjian

Andrew Sandoval

Attorneys for Plaintiff ENVY AZEVEDO and the
Aggrieved employees

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

September 14, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Tulare Nursing & Rehabilitation Hospital, Inc.
9715 W Grove Ave
Visalia, CA 93

Re: Envy Azevedo v. Tulare Nursing & Rehabilitation Hospital, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Envy Azevedo (“Plaintiff”) and a proposed group of current and former employees working for Tulare Nursing & Rehabilitation Hospital, Inc. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by Tulare Nursing & Rehabilitation Hospital, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Labor Code § 2802 provides that an employer shall 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. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working, and this was necessary to perform their job duties. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

Plaintiff also brings a claim on behalf of herself only for a violation of Labor Code §§226 and 1198.5. Plaintiff requested the right to review her personnel file and her pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of these

statutes. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§226 and 1198.5 with respect to Plaintiff only.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 226, 1198.5, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
Liane Katzenstein Ly

LKL/lis

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Tulare Nursing & Rehabilitation Hospital, Inc. via USPS Certified Mail # 7018 1130 0001 5815 4858
 3. Abramson Labor Group 3580 Wilshire Blvd., Ste 1260 Los Angeles, CA 90010-4083 via Electronic Mail Transmission: wza@abramsonlabor.com; dani@abramsonlabor.com

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd Suite

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Envy Azevedo

Plaintiff/Aggrieved Employee Occupation *

Screener

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Tulare Nursing & Rehabilitation Hospital, Inc

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

9715 W Grove Ave

Employer City *

Visalia

Employer State *

California ▼

Employer Zip/Postal Code *

93291

Employer Industry *

Other ▼

Employer Industry for "Other" *

Health Care

Add additional defendants

☐ Add any entity other than an individual☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

Child Labor – Specify Ages

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Provide Details of Other Violation ***Other(Maybe Multiple)**☐ Other Violation**PAGA Claim Type – Check All that Apply ***

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name *****Billing Last Name *****Billing Email *****Billing Phone****Billing Street Name, Number and Suite/Apt *****Billing City *****Billing State *****Billing Zip/Postal Code *****Credit Card Type *****Credit Card Number ***

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 LWDA Letter - ...spital Inc.pdf

Other Attachment – (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☐ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, September 14, 2022 9:15 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

9/14/2022

LWDA Case No. LWDA-CM-907719-22
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Envy Azevedo
Employer: Tulare Nursing & Rehabilitation Hospital, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7CLealie%40kingsleykingsley.com%7C0e2efe40aa21466d59d308da966c56f8%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637987689320030857%7CUnknown%7CTWFPbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IkhWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=fizkNx6fhUDLgFB%2Bu7tPZUmb0HU8Gy6CKVTINiqp5o%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, September 14, 2022 9:16 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-907719-22

Order Number: ORD-000193451

Total:\$75.00

Card Type: Master Card

Date: 9/14/2022

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd Suite 1200

Encino, California

91436

EXHIBIT "3"

WILSHIRE LAW FIRM, PLC

3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
www.wilshirelawfirm.com



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Justin F. Marquez, Esq.
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Erica Chavez, Esq.
Tae Kim, Esq.

Benjamin H. Haber, Esq.
Christina M. Le, Esq.
Daniel Kramer, Esq.
Arsiné Grigoryan, Esq.
Arrash T. Fattahi, Esq.
Zachary D. Greenberg, Esq.
Aram Boyadjian, Esq.

September 23, 2022

LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Tulare Healthcare & Wellness Center, LP
3580 Wilshire Blvd., 6th FL.
Los Angeles, CA 90010
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6372 1753 04

Tulare Healthcare & Wellness Center, LP
680 E. Meritt Ave.
Tulare, CA 93274
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6372 1753 11

Derek Cheung
Agent for Service of Process for:
Tulare Healthcare & Wellness Center, LP
3580 Wilshire Blvd., 6th FL.
Los Angeles, CA 90010
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6372 1753 28

Re: ***Envy Rayleen Azevedo v. Tulare Healthcare & Wellness Center, LP, et al.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Envy Rayleen Azevedo ("Plaintiff") to pursue a Labor Code Private Attorneys General Act ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employer, Tulare Healthcare & Wellness Center, LP ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's Aggrieved Employees.

Plaintiff wishes to pursue this action on behalf of herself as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendant in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees suffered the Labor Code violations described below.

Plaintiff's Employment with Defendant

Defendant own/owned and operates/operated an industry, business, and establishment within the State of California, including Tulare County. As such, and based upon all the facts and circumstances incident to Defendant's business in California, Defendant is subject to the California

Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

Plaintiff Envy Rayleen Azevedo is a resident of Tulare County, California who worked for Defendant in Tulare County, California as an hourly-paid, non-exempt employee from approximately January 2022 to approximately March 2022. During Plaintiff’s employment for Defendant, Defendant paid Plaintiff an hourly wage and classified her as non-exempt from overtime. Defendant typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Plaintiff’s employment, Defendant failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when Defendant terminated her employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff’s experience working for Defendant was typical and illustrative.

Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

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

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

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

Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendant required Plaintiff and the Aggrieved Employees to work “off-the-clock,” uncompensated, by, for example, requiring Plaintiff and the Aggrieved Employees to perform work during uncompensated meal periods and rest periods. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked (including also failing to pay at the correct regular rate of pay), Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties

provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

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

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (including also not permitting employees to leave the premises for meal periods). Defendant also continued to assert control over Plaintiff and the Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period under the conditions required by law, and without properly compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided as required by law. Defendant also never informed Plaintiff of her right to, nor permitted her to take, a second meal period when Plaintiff worked at least ten hours of work in a workday and otherwise unlawfully pressured them to waive such breaks. Accordingly, Defendants' policy and practice were not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided (including also failing to pay at the correct regular rate of pay).

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

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

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

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take (including also failing to pay at the correct regular rate of pay).

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

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

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

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

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

Defendant's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

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

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages),

missed meal period premium wages, and missed rest period premium wages.

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

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

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

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

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

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

Because Defendant violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees

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

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify his or her employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant. Plaintiff and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related expenses, including, without limitation, use of personal cell phones. Plaintiff and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendant, but Defendant failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiff and the Aggrieved Employees for necessary business expenditures.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

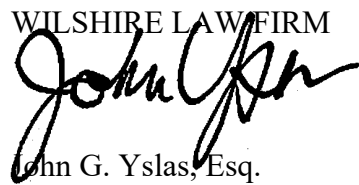
8. Labor Code § 2802 by failing to indemnify for necessary expenditures.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

A handwritten signature in black ink, appearing to read "John G. Yslas", is written over the printed name.

John G. Yslas, Esq.