Bevin Allen Pike (SBN 221936)
Bevin.Pike@capstonelawyers.com
Daniel S. Jonathan (SBN 262209)
Daniel.Jonathan@capstonelawyers.com
Trisha K. Monesi (SBN 303512)
Trisha.Monesi@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

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Attorneys for Plaintiff Amel Haimes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

AMEL HAIMES, as an aggrieved employee pursuant to the Private Attorneys General Act ("PAGA"), on behalf of the State of California and other non-party Aggrieved Employees, Plaintiff, vs. SUNRISE SENIOR LIVING MANAGEMENT, INC., a Virginia corporation; SUNRISE SENIOR LIVING SERVICES, INC., a Delaware corporation; SUNRISE SENIOR LIVING DEVELOPMENT, INC., a Virginia corporation; SUNRISE BURLINGAME SENIOR LIVING, LLC, a Delaware limited liability company; SUNRISE SENIOR LIVING LLC, a Delaware limited liability company; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC, a Delaware limited liability company; SUNRISE PLEASANTON CA SENIOR LIVING, LP, a Delaware limited partnership; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC, a Delaware limited liability company;	Case No.: 22CV409059 **COMPLAINT – PAGA ENFORCEMENT ACTION** (1) Claim for Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.* **Jury Trial Demanded**

SUNRISE TORRANCE SENIOR LIVING, LLC, a Delaware limited liability company; SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP, a Delaware limited partnership; and DOES 1 through 10, inclusive,

Defendants.

Plaintiff Amel Haimes, as an aggrieved employee and on behalf of the State of California and all other non-party Aggrieved Employees, alleges as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former employees who worked for Defendants in California as a non-exempt, hourly paid employee and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint, at any time between one year prior to the filing of the pre-filing written notice to the Labor and Workforce Development Agency ("LWDA") in this case on October 20, 2022, until judgment ("non-party Aggrieved Employees"). Plaintiff's share of civil penalties sought in this action does not exceed $75,000.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statute under which this action is brought does not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiff's share of the civil penalties attributable to violations personally suffered are less than $75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ or employed persons within the County of Santa Clara and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least three (3) locations within the County of Santa Clara, including Defendants' stores located in Cupertino (581 East Fremont Avenue, Cupertino, California 94087); Palo Alto (2701 El Camino Real, Palo Alto, California 94306); and Sunnyvale (633 South Knickerbocker Drive, Sunnyvale, California 94087). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County, and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Amel Haimes is a resident of Poway, in San Diego County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately March 2022 to July 2022. Plaintiff worked for Defendants as a Care Manager at their Sunrise of Sabre Springs facility in San Diego, California. Plaintiff typically worked eight (8) or more hours per day, six (6) days per week. At the time Plaintiff's employment with Defendants ended, she was compensated approximately $17.00 per hour. Plaintiff's job duties included, without limitation, taking care of residents, assisting residents with showers, administering medication, assisting in the dining room, feeding the residents, and taking out trash.

7. On information and belief, Defendants required some employees, including

Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. For example, Defendants presented new hires with a "Sunrise Senior Living Dispute Resolution Agreement" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to employees for signature, including OIS/GSA Exclusion List Certification, Applicant Information Form, and Background Screening Disclosure Form, among other documents. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis at the time they were hired, along with other on-boarding documents. Further, Defendants did not set forth in the agreement or otherwise provide employees with the rules which will govern the arbitration, instead forcing employees to seek this information out on their own: ("The arbitration will be governed by the JAMS Employment Arbitration Rules and Procedures and the JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness. Copies of the applicable rules and procedures may be found at http://www.jamsadr.com").

8. SUNRISE SENIOR LIVING MANAGEMENT, INC. was and is, upon information and belief, a Virginia corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

9. SUNRISE SENIOR LIVING SERVICES, INC. was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

10. SUNRISE SENIOR LIVING DEVELOPMENT, INC. was and is, upon information and belief, a Virginia corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

11. SUNRISE BURLINGAME SENIOR LIVING, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of

California.

12. SUNRISE SENIOR LIVING LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

13. SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

14. SUNRISE PLEASANTON CA SENIOR LIVING, LP was and is, upon information and belief, a Delaware limited partnership, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

15. SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

16. SUNRISE TORRANCE SENIOR LIVING, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

17. SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP was and is, upon information and belief, a Delaware limited partnership, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

18. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

19. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING SERVICES, INC.; SUNRISE SENIOR

LIVING DEVELOPMENT, INC.; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SENIOR LIVING LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; SUNRISE PLEASANTON CA SENIOR LIVING, LP; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC; SUNRISE TORRANCE SENIOR LIVING, LLC; and SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP at all relevant times.

20. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING SERVICES, INC.; SUNRISE SENIOR LIVING DEVELOPMENT, INC.; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SENIOR LIVING LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; SUNRISE PLEASANTON CA SENIOR LIVING, LP; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC; SUNRISE TORRANCE SENIOR LIVING, LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP; and/or DOES 1 through 10 (collectively, “Defendants” or “SUNRISE”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

21. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

22. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

23. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and other non-party

Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work and/or "engaged" Plaintiff and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties available to Plaintiff and other non-party Aggrieved Employees under the law.

24. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other non-party Aggrieved Employees because Defendants have:

(a) jointly exercised meaningful control over the work performed by Plaintiff and other non-party Aggrieved Employees;

(b) jointly exercised meaningful control over Plaintiff's and other non-party Aggrieved Employees' wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other non-party Aggrieved Employees;

(c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants' businesses; and

(d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiff and other non-party Aggrieved Employees and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

25. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

26. SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING SERVICES, INC.; SUNRISE SENIOR LIVING DEVELOPMENT, INC.; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SENIOR LIVING LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; SUNRISE PLEASANTON CA SENIOR LIVING, LP; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC; SUNRISE TORRANCE SENIOR LIVING, LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP; and DOES 1 through 10 are therefore alter egos of each other.

27. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them.

28. Plaintiff further alleges, upon information and belief, that Defendants SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING SERVICES, INC.; SUNRISE SENIOR LIVING DEVELOPMENT, INC.; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SENIOR LIVING LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; SUNRISE PLEASANTON CA SENIOR LIVING, LP; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC; SUNRISE TORRANCE SENIOR LIVING, LLC; and SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website (https://bizfileonline.sos.ca.gov), SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING SERVICES, INC.; SUNRISE SENIOR LIVING DEVELOPMENT, INC.; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SENIOR LIVING LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; SUNRISE PLEASANTON CA SENIOR LIVING, LP; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC; SUNRISE

TORRANCE SENIOR LIVING, LLC; and SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP share the same principal and/or mailing address, “7902 WESTPARK DRIVE, MCLEAN, VA 22102”;

(b) According to their Statement of Information forms filed with the California Secretary of State, SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING SERVICES, INC.; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; and SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC share the same managers and/or officers, including, but not limited to, Edward Frantz;

(c) According to their Statement of Information forms filed with the California Secretary of State, SUNRISE SENIOR LIVING MANAGEMENT, INC. and SUNRISE SENIOR LIVING SERVICES, INC. share the same managers and/or officers, including, but not limited to, David Painter;

(d) On the California Secretary of State’s website, SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING SERVICES, INC.; and SUNRISE SENIOR LIVING DEVELOPMENT, INC. share the same agent for service of process, “California Registered Corporate Agent (1505)”; and

(e) On information and belief, SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING SERVICES, INC.; SUNRISE SENIOR LIVING DEVELOPMENT, INC.; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SENIOR LIVING LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; SUNRISE PLEASANTON CA SENIOR LIVING, LP; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC; SUNRISE TORRANCE SENIOR LIVING, LLC; and SUNRISE SABRE SPRINGS

CA SENIOR LIVING, LP utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

29. Defendants own and operate approximately 45 facilities throughout California. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in McLean, Virginia for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

30. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

31. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in McLean, Virginia, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

32. Defendants continue to employ non-exempt or hourly paid employees in California.

33. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

34. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other non-party Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled to be paid at a regular rate of pay, and corresponding overtime rates of pay, that included as eligible income all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to incorporate all forms of remuneration in calculating the regular rate of pay for Plaintiff and/or other non-party Aggrieved Employees.

37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at least minimum wages for work done off-the-clock.

38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to meal periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other

non-party Aggrieved Employees were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not provided complete and accurate wage statements.

41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

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43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

44. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive reimbursement for all business-related expenses and costs they incurred during the course and scope of their employment and that they did not receive reimbursement of applicable business-related expenses and costs incurred.

45. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that Defendants had a duty to provide Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of their employment with Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

46. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they were properly denied wages, all in order to increase Defendants' profits.

47. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

48. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

49. Plaintiff and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

50. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

(a) The aggrieved employee shall give written notice by online filing (hereinafter "Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

(c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

51. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision

other than those listed in Section 2699.5 after the following requirements have been met:

(a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

52. On October 20, 2022, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-915093-22. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated October 20, 2022, is attached hereto as "Exhibit 1."

53. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the written notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

54. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

55. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

56. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth above.

57. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

58. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-

party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq*.

(Against all Defendants)

59. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

60. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

61. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;

(b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms of remuneration in the "regular rate" of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and/or other non-party Aggrieved Employees, as set forth below;

(c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;

(d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;

(e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;

(f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;

(h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;

(i) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;

(j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and

(k) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment, as set forth below.

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FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

62. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

63. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

64. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

65. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

66. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

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67. First, during the relevant period, Defendants had a policy and/or practice of discouraging and impeding Plaintiff and other non-party Aggrieved Employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with Defendants' understaffing and assignment of heavy workloads (*see infra*), led Plaintiff other non-party Aggrieved Employees to work off-the-clock before their scheduled shift times in order to complete their assigned tasks. For example, during the relevant time period, Defendants kept all facility doors locked due to concerns of resident safety, requiring Plaintiff and other non-party Aggrieved Employees to enter the facilities only when other employees were available to open the doors. As a result, after reporting to work on time, Plaintiff was forced to wait up to ten (10) minutes on multiple occasions before being able to enter Defendants' facilities and clock in because there was no one available to open the doors for her. Defendants failed to track the time Plaintiff and other non-party Aggrieved Employees spent waiting to clock in, and Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

68. Second, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing, such that there were too few employees on duty to handle the heavy workloads and provide meal coverage. Furthermore, Defendants had a company-wide practice of failing to schedule meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods. For example, at least once per week, Plaintiff would miss her meal period entirely to meet the demands of her workload due to Defendants' understaffing and lack of meal period coverage. For the same reasons, Plaintiff would have her meal periods interrupted at least three (3) times per week, and/or shortened by 5-10 minutes to provide assistance to residents or assist other Care Givers with providing care to residents. Consequently, Plaintiff and other non-party Aggrieved Employees were required to work through meal periods and/or had their unpaid meal periods interrupted to complete their assigned workloads.

69. Furthermore, Defendants' company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their

meal periods were shortened or interrupted, because Defendants' timekeeping system automatically locked Plaintiff and other non-party Aggrieved Employees out once they clocked out for a meal period, and would not permit them to clock back in from a meal period until a full 30 minutes had elapsed. Thus, Defendants did not permit employees to record any hours worked during meal periods, preventing Plaintiff and other non-party Aggrieved Employees from being paid for hours worked during meal periods.

70. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and other non-party Aggrieved Employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

71. Moreover, in addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and/or other non-party Aggrieved Employees worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

72. For example, Defendants paid Plaintiff and other non-party Aggrieved Employees incentive pay and/or nondiscretionary bonuses which were listed on Plaintiff's and other non-party Aggrieved Employees' wage statements as "Shift and Sched" or "Employee Referr." During pay periods that Plaintiff and/or other non-party Aggrieved Employees were paid overtime wages, Defendants did not incorporate the incentive pay and/or nondiscretionary bonuses into Plaintiff's and/or other non-party Aggrieved Employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and/or other non-party Aggrieved Employees 1.5 times

their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and/or other non-party Aggrieved Employees on a company-wide basis.

73. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PAY MINIMUM WAGES

VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198

74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

75. As stated above, due to Defendants' restrictions on overtime accrual, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked before scheduled shifts, because these hours were not accurately recorded. As stated, because Defendants discouraged and impeded Plaintiff and other non-party Aggrieved Employees from recording hours worked that were outside of their scheduled shifts, Plaintiff and other non-party Aggrieved Employees were required to work off-the-clock before their scheduled shift start times waiting for other employees to unlock the entrance door and let them in.

76. Furthermore, as set forth above, due to Defendants' uniform practice of understaffing, assignment of heavy workloads, failure to schedule meal periods, and resultant

lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. As a result, Plaintiff and other non-party Aggrieved Employees were not relieved of all duties during unpaid meal periods.

77. Moreover, as stated, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods, because Defendants' timekeeping system automatically locked Plaintiff and other non-party Aggrieved Employees out for a full 30 minutes when they clocked out for a meal period. Thus, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

78. Thus, Defendants did not pay at least minimum wages for all hours worked by Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1198.

79. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE AND RECORD MEAL PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

80. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

81. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not

more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

82. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

83. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

84. As set forth above, during the relevant time period, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their locations while assigning heavy workloads. Further, Defendants had a company-wide practice of failing to schedule meal periods, resulting in Plaintiff and other non-party Aggrieved Employees having their meal periods cut short to return to work, and/or or waiting extended periods of time before taking meal periods. Thus, Defendants' practices and policies prevented Plaintiff and other non-party Aggrieved Employees from taking all compliant meal periods to which they were entitled.

85. Specifically, Plaintiff and other non-party Aggrieved Employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, Plaintiff missed her meal periods entirely approximately once per week and had her meal periods interrupted or cut short regularly, because the facilities were severely understaffed, and

employees were forced to work through or return early from meal periods, in order to attend to residents and complete their assigned duties. Further, for the same reasons and about three (3) times per week, Plaintiff would take her meal periods between her sixth and seventh hour of work.

86. Furthermore, as stated, Defendants' company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their meal periods were shortened or interrupted, because the timekeeping system automatically locked Plaintiff and other non-party Aggrieved Employees out once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

87. Moreover, Defendants did not always provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Plaintiff and other non-party Aggrieved Employees worked shifts in excess of ten (10) or more hours per day but were not always provided an uninterrupted second 30-minute meal period. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. Further, Defendants did not provide Plaintiff and other non-party Aggrieved Employees with meals at no charge and did not permit employees to eat with residents.

88. Defendants knew or should have known that as a result of their policies and practices, Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that they did not pay Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

89. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees premium

pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and other non-party Aggrieved Employees at the correct rate of pay for premiums because Defendants systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

90. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees compliant meal periods and failed to pay the full meal period premiums due. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

91. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

92. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

93. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th

257, 269-270 (2016).

94. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

95. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices, including understaffing and assignment of heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Additionally, Defendants also failed to schedule rest periods which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

96. Furthermore, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated Plaintiff and other non-party Aggrieved Employees remain on the work premises during their rest periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises during rest periods, even when they were not in sole charge of residents, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved Employees during rest periods.

97. As a result, Plaintiff and other non-party Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Plaintiff had to forego her rest periods altogether due to the heavy workload/understaffing policies and Defendants' failure to schedule rest periods for employees. Additionally, on information and belief, to the extent other non-party Aggrieved Employees

were able to take rest periods, Defendants failed to authorize and permit other non-party Aggrieved Employees to take another rest period when their rest periods were interrupted to respond to the needs of residents.

98. Defendants also have engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not received all premium pay for missed rest periods. Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and other non-party Aggrieved Employees at the correct rate of pay for premiums because Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

99. Accordingly, Defendants failed to authorize and permit all compliant rest periods and failed to pay the full rest period premiums due. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS

VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

100. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

101. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages

earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

102. Because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

103. Additionally, because Defendants did not calculate Plaintiff's and other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, Defendants did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, Defendants also failed to list the correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

104. The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours

they worked off-the-clock.

105. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, 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. . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

106. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Plaintiff and other non-party Aggrieved Employees in violation of section 1198. Furthermore, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

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107. Defendants' conduct violates California Labor Code 226(a), 1174(d), and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

108. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

109. At all relevant times herein, California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

110. During the relevant time period, Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees all wages due to them within any time period specified by California Labor Code section 204 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums.

111. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

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FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

112. At all times relevant herein set forth, Labor Code sections 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.

113. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

114. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

115. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen the

employer requires the use of tools or equipment or they are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

116. First, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and non-party Aggrieved Employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related mobile device expenses. For example, Plaintiff and non-party Aggrieved Employees were required to use their personal mobile devices and/or mobile data for downloading the UKG Workforce Central mobile application which Plaintiff and non-party Aggrieved Employees used to clock in and out for their shifts and meals. Further, Plaintiff was required to use her personal cellular phone to communicate with management regarding shift coverage and receive updates from management regarding resident care. Although Defendants required Plaintiff and non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, Defendants failed to reimburse them for this cost.

117. Second, during the relevant time period, Defendants required Plaintiff and non-party Aggrieved Employees to wear T-shirts with the company logo to every shift. Plaintiff was provided with four (4) T-shirts in total. However, due to the nature of residential care facility work, Plaintiff's and non-party Aggrieved Employees' uniforms would become exposed to excessive sweating such that four T-shirts was not a sufficient number of uniforms for the workweek. As a result, they had to wash their uniform items more frequently, thus incurring additional utility and laundry expenses for the upkeep of their uniforms. Thus, Defendants failed to maintain the uniforms they required Plaintiff and non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of maintaining employee

uniforms.

118. Defendants could have provided Plaintiff and non-party Aggrieved Employees with the actual tools required for use on the job, such as company mobile devices, as well as an adequate number of uniform items or access to laundering services. Or, Defendants could have reimbursed employees for their mobile device usage, and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff and non-party Aggrieved Employees.

119. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)

120. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

121. During the relevant time period, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

122. Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars ($25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2810.5;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2810.5;

5. For pre-judgment and post-judgment interest as provided by law; and

6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: December 27, 2022

Respectfully submitted,

Capstone Law APC

By: Bevin Allen Pike

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Plaintiff Amel Haimes

EXHIBIT “1”

1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

October 20, 2022

VIA ONLINE SUBMISSION
California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.tfaforms.net/308)

Subject: *Amel Haimes v. Sunrise Senior Living Management, Inc., et al.*

Dear PAGA Administrator:

This office represents Amel Haimes in connection with her claims under the California Labor Code. Ms. Haimes was an employee of SUNRISE SENIOR LIVING MANAGEMENT, INC.; SUNRISE SENIOR LIVING DEVELOPMENT, INC.; SUNRISE SENIOR LIVING LLC; SUNRISE PLEASANTON CA SENIOR LIVING, LP; SUNRISE SENIOR LIVING SERVICES, INC.; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC; SUNRISE TORRANCE SENIOR LIVING, LLC; and/or SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP. For the purpose of this letter, Ms. Haimes collectively refers to these entities as "SUNRISE."

The employers may be contacted directly at the addresses below:

SUNRISE SENIOR LIVING
MANAGEMENT, INC.
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE SENIOR LIVING
DEVELOPMENT, INC.
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE SENIOR LIVING LLC
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE SENIOR LIVING SERVICES, INC.
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE BURLINGAME SENIOR
LIVING, LLC
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE SABRE SPRINGS CA SENIOR
LIVING OPCO, LLC
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE PLEASANTON CA SENIOR
LIVING, LP
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE PLEASANTON CA SENIOR
LIVING OPCO, LLC
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE TORRANCE SENIOR
LIVING, LLC
7902 WESTPARK DRIVE
MCLEAN, VA 22102

SUNRISE SABRE SPRINGS CA SENIOR
LIVING, LP
7902 WESTPARK DRIVE
MCLEAN, VA 22102

Ms. Haimes intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Haimes seeks relief on behalf of herself, the State of California, and other persons who are or were employed by SUNRISE as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SUNRISE employed Ms. Haimes as hourly paid, non-exempt employee from approximately March 2022 to July 2022. Ms. Haimes worked for SUNRISE as a Care Manager at its Sunrise of Sabre Springs location in San Diego, California. During her employment, Ms. Haimes typically worked eight (8) to sixteen (16) hours per day and six (6) days per week. At the time Ms. Haimes's employment with SUNRISE ended, she earned $17.00 per hour. Her job duties included, without limitation, taking care of residents, assisting residents with showers, administering medication, assisting in the dining room, feeding the residents, and taking out trash.

SUNRISE committed one or more of the following Labor Code violations against Ms. Haimes, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c): [1]

<u>SUNRISE's Company-Wide and Uniform Payroll and HR Practices</u>

SUNRISE SENIOR LIVING MANAGEMENT, INC. and SUNRISE SENIOR LIVING DEVELOPMENT, INC. are Virginia corporations; SUNRISE SENIOR LIVING SERVICES, INC. is a Delaware corporation; SUNRISE SENIOR LIVING LLC; SUNRISE BURLINGAME SENIOR LIVING, LLC; SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC; SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC; and SUNRISE TORRANCE SENIOR LIVING, LLC are Delaware limited liability companies; SUNRISE PLEASANTON CA SENIOR LIVING, LP and SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP are Delaware limited partnerships. Together, they operate at least 45 independent assisted living facilities in California. Upon information and belief, SUNRISE maintains a single, centralized Human Resources (HR)

[1] These facts, theories, and claims are based on Ms. Haimes's experience and counsel's review of those records currently available relating to Ms. Haimes's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Haimes reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

department at its corporate headquarters in Mclean, Virginia for all non-exempt, hourly paid employees working for SUNRISE in California, including Ms. Haimes and other aggrieved employees. At all relevant times, SUNRISE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Haimes and other aggrieved employees, regardless of its location or position.

Upon information and belief, SUNRISE maintains a centralized Payroll department at its corporate headquarters in Mclean, Virginia, which processes payroll for all non-exempt, hourly paid employees working for SUNRISE in California, including Ms. Haimes and other aggrieved employees. Further, SUNRISE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Ms. Haimes and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, SUNRISE utilized the same methods and formulas when calculating wages due to Ms. Haimes and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

SUNRISE willfully failed to pay all overtime wages owed to Ms. Haimes and other aggrieved employees. During the relevant time period, Ms. Haimes and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, SUNRISE had a policy and/or practice of discouraging and impeding Ms. Haimes and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with SUNRISE's understaffing and assignment of heavy workloads (*see infra*), led Ms. Haimes and other aggrieved employees to work off-the-clock before their scheduled shift times in order to complete their assigned tasks. For example, during the relevant time period, SUNRISE kept all facility doors locked due to concerns of resident safety, requiring Ms. Haimes and other aggrieved employees to enter the facilities only when other employees were available to open the doors. As a result, after reporting to work on time, Ms. Haimes was forced to wait up to ten (10) minutes on multiple occasions before being able to enter SUNRISE's facilities and clock in because there was no one available to open the doors for her. SUNRISE failed to track the time Ms. Haimes and other aggrieved employees spent waiting to clock in, and Ms. Haimes and other aggrieved employees received no compensation for this time.

Second, as stated, SUNRISE had, and continues to have, a company-wide policy and/or practice of understaffing, such that there were too few employees on duty to handle the heavy workloads and provide meal coverage. Furthermore, SUNRISE had a company-wide practice of failing to schedule meal periods, which further caused Ms. Haimes and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, at least once per week, Ms. Haimes would miss her meal period entirely to meet the demands of her workload due to SUNRISE's understaffing and lack of meal period coverage. For the same reasons, Ms. Haimes would have her meal periods interrupted at least three (3) times per week, and/or shortened by 5-10 minutes to provide assistance to residents or assist other Care Givers with providing care to residents. Consequently, Ms. Haimes and other aggrieved employees were required to work through meal periods and/or had their unpaid meal periods interrupted to complete their assigned workloads.

Furthermore, SUNRISE's company-wide timekeeping system prevented Ms. Haimes and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because SUNRISE's timekeeping system automatically locked Ms. Haimes and other aggrieved employees out once they clocked out for a meal period, and would not permit them to clock back in from a meal period until a full 30 minutes had elapsed. Thus, SUNRISE did not permit employees to record any hours worked during meal periods, preventing Ms. Haimes and other aggrieved employees from being paid for hours worked during meal periods.

SUNRISE knew or should have known that as a result of these company-wide practices and/or policies, Ms. Haimes and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Haimes and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Moreover, in addition to an hourly wage, SUNRISE paid Ms. Haimes and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SUNRISE failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Haimes and/or other aggrieved employees worked overtime and received these other forms of pay, SUNRISE failed to pay all overtime wages by paying a lower overtime rate than required.

For example, SUNRISE paid Ms. Haimes and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Ms. Haimes's and other aggrieved employees' wage statements as "Shift and Sched" or "Employee Referr." During pay periods that Ms. Haimes and/or other aggrieved employees were paid overtime wages, SUNRISE did not incorporate the incentive pay and/or nondiscretionary bonuses into Ms. Haimes's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, SUNRISE paid Ms. Haimes and/or other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. SUNRISE's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Haimes and/or other aggrieved employees on a company-wide basis.

SUNRISE's failure to pay Ms. Haimes and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Haimes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated above, due to SUNRISE's restrictions on overtime accrual, SUNRISE systematically failed to pay Ms. Haimes and other aggrieved employees for actual hours worked before scheduled shifts, because these hours were not accurately recorded. As stated, because SUNRISE discouraged and impeded Ms. Haimes and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Haimes and other aggrieved employees were required to work off-the-clock before their scheduled shift start times waiting for other employees to unlock the entrance door and let them in.

Furthermore, as set forth above, due to SUNRISE's uniform practice of understaffing, assignment of heavy workloads, failure to schedule meal periods, and resultant lack of meal period coverage, Ms. Haimes and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. As a result, Ms. Haimes and other aggrieved employees were not relieved of all duties during unpaid meal periods.

Moreover, as stated, SUNRISE systematically failed to pay Ms. Haimes and other aggrieved employees for actual hours worked during unpaid meal periods, because SUNRISE's timekeeping system automatically locked Ms. Haimes and other aggrieved employees out for a full 30 minutes when they clocked out for a meal period. Thus, SUNRISE systematically failed to pay Ms. Haimes and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SUNRISE did not pay at least minimum wages for all hours worked by Ms. Haimes and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SUNRISE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, SUNRISE regularly failed to pay at least minimum wages to Ms. Haimes and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Haimes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

As set forth above, during the relevant time period, SUNRISE had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads. Further, SUNRISE had a company-wide practice of failing to schedule meal periods, resulting in Ms. Haimes and other aggrieved employees having their meal periods cut short to return to work, and/or or waiting extended periods of time before taking meal periods. Thus, SUNRISE's practices and policies prevented Ms. Haimes and other aggrieved employees from taking all compliant meal periods to which they were entitled.

Specifically, Ms. Haimes and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, Ms. Haimes missed her meal periods entirely approximately once per week and had her meal periods interrupted or cut short regularly, because the facilities were severely understaffed, and employees were forced to work through or return early from meal periods, in order to attend to residents and complete their assigned duties. Further, for the same reasons and about three (3) times per week, Ms. Haimes would take her meal periods between her sixth and seventh hour of work.

Furthermore, as stated, SUNRISE's company-wide timekeeping system prevented Ms. Haimes and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the timekeeping system automatically locked Ms. Haimes and other aggrieved employees out once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Moreover, SUNRISE did not always provide Ms. Haimes and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Haimes and other aggrieved employees worked shifts in excess of ten (10) or more hours per day but were not always provided an uninterrupted second 30-minute meal period. Ms. Haimes and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. Further, SUNRISE did not provide Ms. Haimes and other aggrieved employees with meals at no charge and did not permit employees to eat with residents.

SUNRISE knew or should have known that as a result of its policies and practices, Ms. Haimes and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SUNRISE further knew or should have known that it did not pay Ms. Haimes and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, SUNRISE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Haimes and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that SUNRISE did pay Ms. Haimes and other aggrieved employees premium pay for missed, late, and interrupted meal periods, SUNRISE did not pay Ms. Haimes and other aggrieved employees at the correct rate of pay for premiums because SUNRISE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SUNRISE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Haimes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SUNRISE regularly failed to authorize and permit Ms. Haimes and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SUNRISE's company-wide practices, including understaffing and assignment of heavy workloads, prevented Ms. Haimes and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, SUNRISE also failed to schedule rest periods which, coupled with SUNRISE's failure to provide adequate rest period coverage, further led to Ms. Haimes and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, SUNRISE maintained and implemented a company-wide on-premises rest period policy, which mandated Ms. Haimes and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Haimes and other aggrieved employees were restricted from leaving the premises during rest periods, even when they were not in sole charge of residents, they were denied the ability to use their rest periods freely for their own purposes. Thus, SUNRISE effectively maintained control over Ms. Haimes and other aggrieved employees during rest periods.

As a result, Ms. Haimes and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Ms. Haimes had to forego her rest periods altogether due to the heavy workload/understaffing policies and SUNRISE's failure to schedule rest periods for employees. Additionally, on information and belief, to the extent other aggrieved employees were able to take rest periods, SUNRISE failed to authorize and permit other aggrieved employees to take another rest period when their rest periods were interrupted to respond to the needs of residents.

SUNRISE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Haimes and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that SUNRISE did pay Ms. Haimes and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SUNRISE did not pay Ms. Haimes and other aggrieved employees at the correct rate of pay for premiums because SUNRISE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SUNRISE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Haimes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SUNRISE has knowingly and intentionally provided Ms. Haimes and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SUNRISE issued uniform wage statements to Ms. Haimes and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, SUNRISE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because SUNRISE did not record the time Ms. Haimes and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), SUNRISE did not list the correct amount of gross wages and net wages earned by Ms. Haimes and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SUNRISE failed to accurately list the total number of hours worked by Ms. Haimes and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because SUNRISE did not calculate Ms. Haimes's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, SUNRISE did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SUNRISE also failed to list the correct amount of net wages in violation of section 226(a)(5). SUNRISE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, 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. . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SUNRISE willfully failed to maintain accurate payroll records for Ms. Haimes and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SUNRISE engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Haimes and other aggrieved employees in violation of section 1198. Furthermore, in light of SUNRISE's failure to provide Ms. Haimes and other aggrieved employees with second 30-minute meal periods to which they were entitled, SUNRISE kept no records of meal start and end times for second meal periods.

Because SUNRISE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Haimes and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Haimes and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Haimes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SUNRISE failed to pay Ms. Haimes and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Ms. Haimes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 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.

SUNRISE willfully failed to pay Ms. Haimes and other aggrieved employees who are no longer employed by SUNRISE the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums either at the time of discharge, or within seventy-two (72) hours of their leaving SUNRISE's employ.

Ms. Haimes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

<u>Violation of California Labor Code § 2802 – Unreimbursed Business Expenses</u>

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc*., 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

First, during the relevant time period, SUNRISE had a company-wide policy of requiring Ms. Haimes and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but SUNRISE failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Haimes and other aggrieved employees were required to use their personal mobile devices and/or mobile data for downloading the UKG Workforce Central mobile application which Ms. Haimes and other aggrieved employees used to clock in and out for their shifts and meals. Further, Ms. Haimes was required to use her personal cellular phone to communicate with management regarding shift coverage and receive updates from management regarding resident care. Although SUNRISE required Ms. Haimes and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, SUNRISE failed to reimburse them for this cost.

Second, during the relevant time period, SUNRISE required Ms. Haimes and other aggrieved employees to wear T-shirts with the company logo to every shift. Ms. Haimes was provided with four (4) T-shirts in total. However, due to the nature of residential care facility work, Ms. Haimes's and other aggrieved employees' uniforms would become exposed to excessive sweating such that four T-shirts was not a sufficient number of uniforms for the workweek. As a result, they had to wash their uniform items more frequently, thus incurring additional utility and laundry expenses for the upkeep of their uniforms. Thus, SUNRISE failed to maintain the uniforms it required Ms. Haimes and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

SUNRISE could have provided Ms. Haimes and other aggrieved employees with the actual tools required for use on the job, such as company mobile devices, as well as an adequate number of uniform items or access to laundering services. Or, SUNRISE could have reimbursed employees for their mobile device usage, and laundering expenses or provided a uniform maintenance allowance. Instead, SUNRISE passed these operating costs off onto Ms. Haimes and other aggrieved employees.

Thus, SUNRISE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Haimes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

SUNRISE failed to provide Ms. Haimes and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). SUNRISE's failure to provide Ms. Haimes and other aggrieved employees with written notice of basic information regarding their employment with SUNRISE is in violation of Labor Code section 2810.5.

Ms. Haimes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." SUNRISE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Haimes's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Haimes seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Haimes, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against SUNRISE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Haimes seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Haimes's reasonable attempt to settle her dispute with SUNRISE prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform SUNRISE of Ms. Haimes's aforementioned grievances and the proposed remedies as detailed below, while affording SUNRISE a reasonable opportunity to satisfy Ms. Haimes's demands.

Demand is hereby made that SUNRISE shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. SUNRISE shall pay Ms. Haimes and all other aggrieved employees employed by SUNRISE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. SUNRISE shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.

3. SUNRISE shall conduct a survey or interview all current and former aggrieved employees in California who worked for SUNRISE in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. SUNRISE shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SUNRISE also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. SUNRISE shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for SUNRISE's benefit, including, but not limited to, mobile device expenses, and uniform maintenance, as required by Labor Code section 2802.

6. SUNRISE shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

7. SUNRISE shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.

8. SUNRISE shall provide Ms. Haimes and all aggrieved employees employed by SUNRISE at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

9. SUNRISE shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

10. SUNRISE shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq*., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Ninel

Ninel Kocharyan

Copy: SUNRISE SENIOR LIVING MANAGEMENT, INC. (via U.S. Certified Mail); SUNRISE SENIOR LIVING DEVELOPMENT, INC. (via U.S. Certified Mail); SUNRISE SENIOR LIVING LLC (via U.S. Certified Mail); SUNRISE PLEASANTON CA SENIOR LIVING, LP (via U.S. Certified Mail); SUNRISE SENIOR LIVING SERVICES, INC. (via U.S. Certified Mail); SUNRISE BURLINGAME SENIOR LIVING, LLC (via U.S. Certified Mail); SUNRISE SABRE SPRINGS CA SENIOR LIVING OPCO, LLC (via U.S. Certified Mail); SUNRISE PLEASANTON CA SENIOR LIVING OPCO, LLC (via U.S. Certified Mail); SUNRISE TORRANCE SENIOR LIVING, LLC (via U.S. Certified Mail); SUNRISE SABRE SPRINGS CA SENIOR LIVING, LP (via U.S. Certified Mail)