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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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

SHALONDA YOUNG, an individual, on
behalf of herself and others similarly situated

PLAINTIFF,

v.

GENUS HOME CARE, INC; GENUS
HOME CARE, INC. OF SAN
BERNARDINO and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. CIVSB2302783

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

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Failure to Provide Employment Records Violation of Labor Code §§ 226 and 1198.5
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff SHALONDA YOUNG, an individual, on behalf of herself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant GENUS HOME CARE, INC; GENUS HOME CARE, INC.¹ OF SAN
5 BERNARDINO (“Defendants”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382 and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined as:

- 10 a. All home healthcare workers who are employed or have been
11 employed by GENUS HOME CARE, INC; GENUS HOME CARE,
12 INC. OF SAN BERNARDINO, in the State of California who
13 worked one or more pay periods since four (4) years prior to the
14 filing of this action to the present plus any additional time during
15 which the statutes of limitation for the causes of action herein were
16 tolled pursuant to Emergency Rule 9 of the California Rules of
17 Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed
18 Class”)

16 2. Any limitations period referenced in this complaint is extended pursuant to
17 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
18 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
19 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
20 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
21 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
22 relevant time period or statute of limitations referenced in this complaint is extended into the past
23 by the number of days in which this tolling was in effect.

24 3. Defendants have misclassified Plaintiff and the Proposed Class as independent

25
26 ¹ Plaintiff sent a notice letter to the Labor and Workforce Agency (“LWDA”) and
27 Defendants Genus Home Care, Inc. and Genus Home Care of San Bernardino on January 19,
28 2023, which incorrectly named the second Defendant as “Genus Home Care of San Bernardino”
inadvertently omitting the “Inc.” from “Genus Home Care, Inc. of San Bernardino”. To correct
this error, Plaintiff sent an amended notice letter on February 23, 2023, correctly stating the
second Defendant’s name as “Genus Home Care, Inc. of San Bernardino”.

1 contractors, depriving them of wages, including minimum wages, and other benefits owed to them.

2 4. From at least four (4) years prior to the filing of this action continuing to the present,
3 Defendants have a consistent policy of failing to pay wages and overtime to all members of the
4 Proposed Class, including Plaintiff, when they work more than eight hours in a day or forty hours
5 in a week. Plaintiff and other members of the Proposed Class were not properly compensated for
6 all hours worked at the appropriate rate of pay.

7 5. From at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendants have a consistent policy of failing to inform members of the Proposed Class
9 of their right to take meal periods by way of a lawful policy, failing to provide compliant meal
10 periods, and failing to pay such employees one (1) hour of pay at the employees' regular rate of
11 compensation for each workday that the compliant meal period was not provided as required by
12 California state wage and hour laws. Defendants also have a consistent policy of paying meal
13 period premiums at the base rate and not the blended rate, when meal period premiums are
14 provided, in violation of *Ferra v. Loews Hollywood Hotel, LLC* and Labor Code §§ 226.7 and 512.

15 6. From at least four (4) years prior to the filing of this action and continuing to the
16 present, Defendants failed to apprise Plaintiff and all members of the Proposed Class of their rights
17 associated with rest periods and failed to provide compliant rest periods. Defendant has had a
18 consistent policy of failing to provide all required, compliant rest periods of at least ten (10)
19 minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one
20 (1) hour of pay at the employee's regular rate of compensation for each workday that the compliant
21 rest period was not provided, as required by California state wage and hour laws. As discussed
22 above, *Ferra* requires the rest period premium payments must include the hourly value of any
23 nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an
24 employee's base hourly rate. Defendants have a consistent policy of paying rest period premiums
25 at the base rate and not the blended rate when rest premiums are provided, in violation of Labor
26 Code § 226.7.

27 7. For at least one (1) year prior to the filing of this action continuing to the present,
28 Defendants have failed to comply with Industrial Welfare Commission ("IWC") Wage Order 4-

2001 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class accurate itemized wage statements in writing showing the inclusive dates, number of total hours worked at each applicable hourly rate in effect during the pay period and the corresponding number of hours worked at each hourly rate by Plaintiff and members of the Proposed Class. Further, Plaintiff and members of the Proposed Class are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do, they are not the accurate rate.

8. For at least three (3) years prior to the filing of this action continuing to the present, Defendants have failed to pay all wages due at the time of termination or resignation to Proposed Class.

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

10. Plaintiff brings this action on behalf of herself and all members of the Proposed Class pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages/overtime, meal and rest period penalties, wage statements penalties, all wages due upon termination, other penalties as appropriate, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

11. Plaintiff, on behalf of herself and all Proposed Class members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

12. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in his PAGA notice letter

(see Exhibit “1”), brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendants’ failure to pay all wages and/or overtime, failure to provide lawful meal and rest periods, failure to maintain accurate meal period records, failure to provide accurate itemized wage statements, and failure to pay all wages due at the time of termination.

II.

JURISDICTION AND VENUE

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

14. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of San Bernardino and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

15. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within San Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class members within the State of California and the county of San Bernardino.

16. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

17. Plaintiff files this amended complaint adding a claim for penalties under Labor Code §2699, *et seq.* as a matter of right. (see Labor Code § 2699.3(a)(2)(C)).

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III.
PARTIES

A. PLAINTIFF

18. Plaintiff SHALONDA YOUNG is a resident of California.

19. Plaintiff and all members of the Proposed Class, were regularly required to work as independent contractors though Defendant willfully misclassified them and they were actually employees of Defendant;

20. As specifically pled herein, Plaintiff and all members of the Proposed Class, were regularly required to:

- a. Work without being compensated at the minimum wage rate;
- b. Work without being paid for all hours worked at the appropriate rate;
- c. Work without being provided compliant meal periods;
- d. Work without being provided compliant rest periods;
- e. Work without being provided accurate itemized wage statements.

21. Defendant willfully failed to compensate Plaintiff and all members of the Proposed Class for wages at the termination of their employment with Defendant.

22. Additionally, Plaintiff requested copies or an opportunity to copy her personnel file and her pay records. Defendant refused to comply with this request in violation of Labor Code §§ 226 and 1198.5.

23. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

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

B. DEFENDANTS

25. Defendants GENUS HOME CARE, INC; GENUS HOME CARE, INC. OF SAN BERNARDINO are believed to be a California corporations operating within the State of California. Defendants’ have the same corporate address which is believed to be 1476 W. 9th

1 Street Ste B1 Upland, CA 91786. Upon information and belief, Defendants employed Plaintiff
2 and similarly situated persons as hourly employees within California. Defendant has done and
3 does business throughout the State of California.

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

11 27. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
12 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
13 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
14 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
15 employer and/or joint employer of Plaintiff and members of the Proposed Class.

16 28. Furthermore, Defendants acted in all respects as the employers or joint employers
17 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
18 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
19 engaged, thereby creating a common law employment relationship, with the Proposed Class.
20 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

21 IV.

22 FACTUAL BACKGROUND

23 29. Plaintiff and members of the Proposed Class are, and at all times pertinent hereto,
24 have been classified as independent contractors by Defendant. Defendants hire health care
25 workers who are not compensated at the legal minimum wage for all hours worked and who are
26 not compensated at the proper overtime rate for all hours worked.

27 30. Labor Code §226.8 makes it unlawful for any person or employer to willfully
28 misclassify an individual as an independent contractor. Defendant willfully misclassified Plaintiff

1 and the Proposed Class as independent contractors when they are actually employees.

2 31. Upon information and belief, Plaintiff and the Proposed Class are covered by
3 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
4 Code of Regs. § 11040).

5 32. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid at
6 the minimum wage rate.

7 33. On a regular and consistent basis, Plaintiff and the Proposed Class members were
8 not properly compensated for all wages at the appropriate rate of pay. Plaintiff and all other
9 similarly situated employees were not paid at the proper corresponding rate for all hours worked,
10 including overtime. Plaintiff and other members of the Proposed Class regularly worked work in
11 excess of eight hours in one workday and in excess of 40 hours in one workweek and were not
12 compensated at the appropriate overtime rate for all hours worked including overtime for all hours
13 worked over eight (8) in a day and/or forty (40) in a work week.

14 34. Plaintiff and the Proposed Class have been required by Defendants to work as
15 independent contractors though they are actually employees of Defendant.

16 35. On a regular and consistent basis, Plaintiff and members of the Proposed Class have
17 been forced by Defendants to work over five (5) hours in one day without being provided a thirty
18 (30) minute compliant meal break and not being compensated one (1) hour of pay at their regular
19 rate of compensation for each workday that a compliant meal period was not provided or provided
20 after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare
21 Commission Wage Orders. Defendants have a consistent policy of paying meal period premiums
22 at the base rate and not the blended rate when meal period premiums are provided, in violation of
23 *Ferra* and Labor Code §§ 226.7 and 512. Defendant also failed to inform Plaintiff and the
24 Proposed Class of their right to take compliant meal periods by way of a lawful policy.

25 36. On a regular and consistent basis, Defendants have failed to provide Plaintiff and
26 members of the Proposed Class all required compliant rest periods of at least ten (10) minutes per
27 four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour of
28 pay at the employee's regular rate of compensation for each workday that the compliant rest period

1 was not provided, as required by California state wage and hour laws. Defendants have a
2 consistent policy of paying rest period premiums at the base rate and not the blended rate, when
3 rest break premiums are provided, as required. Defendants also failed to inform Plaintiff and the
4 Proposed Class of their right to take compliant rest periods by way of a lawful policy.

5 37. For at least one (1) year prior to the filing of this action continuing to the present,
6 Defendants failed to comply with Labor Code § 226(a). Plaintiff and members of the Proposed
7 Class are furnished wage statements in violation of Labor Code §226(a) that do not accurately
8 show the start and end date of each pay period, total hours worked and all applicable hourly rates
9 in effect during the pay period and the corresponding number of hours worked at each hourly rate
10 by Plaintiff and members of the Proposed Class in violation of Labor Code §226(a)(2), (6) and (9).
11 Further, Plaintiff and members of the Proposed Class are issued wage statements that do not
12 include accurate meal and rest period premiums as a result of the claims alleged above.

13 38. Defendants willfully failed to pay wages and compensation, when Plaintiff and
14 members of the Proposed Class quit or were discharged. This failure was willful, without legal
15 justification, and interfered with Plaintiff's and members of the Proposed Class's rights.

16 39. Defendant willfully failed to provide Plaintiff with her personnel file and pay data
17 after a written request. Plaintiff requested copies or an opportunity to copy her personnel file and
18 her pay records. Defendant refused to comply with this request in violation of Labor Code §§ 226
19 and 1198.5.

20 40. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

21 **V.**

22 **CLASS ACTION ALLEGATIONS**

23 41. Plaintiff brings this action on behalf of herself and all others similarly situated as a
24 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
25 Proposed Class composed of and defined as follows:

- 26 a. All home healthcare workers who are employed or have been
27 employed for GENUS HOME CARE, INC; GENUS HOME CARE,
28 INC.OF SAN BERNARDINO in the State of California who
worked one or more pay periods since four (4) years prior to the

1 filing of this action to the present plus any additional time during
2 which the statutes of limitation for the causes of action herein were
3 tolled pursuant to Emergency Rule 9 of the California Rules of
4 Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed
5 Class”)

6 42. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
7 amend or modify the class description with greater specificity, by division into subclasses, or by
8 limitation to particular issues.

9 43. This action has been brought and may properly be maintained as a class action
10 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
11 community of interest in the litigation and the Proposed Class are easily ascertainable.

12 **A. NUMEROSITY**

13 44. The potential members of the Proposed Class as defined are so numerous that
14 joinder of all the members of the Proposed Class is impracticable. While the precise number of
15 proposed class members has not been determined at this time, Plaintiff is informed and believes
16 that Defendant currently employ, and during the relevant time periods employed over 50 members
17 of the Proposed Class.

18 45. Plaintiff alleges that Defendants’ employment records would provide information
19 as to the number and location of all members of the Proposed Class. Joinder of all members of the
20 Proposed Class is not practicable.

21 **B. COMMONALITY**

22 46. There are questions of law and fact common to the Proposed Class that predominate
23 over any questions affecting only individual members of the Proposed Class. These common
24 questions of law and fact include, without limitation:

25 a. Whether Defendants misclassified Plaintiff and the Proposed Class as
26 independent contractors;

27 b. Whether Defendants failed to pay wages and/or overtime compensation at
28 the appropriate rate for all hours worked as required by the Labor Code and Wage Orders under
Labor Code §§ 510, 1194, 1194.2, and 1199;

1 c. Whether Defendants violated Labor Code § 226.7, 512 and IWC Wage
2 Order 4-2001 or other applicable IWC Wage Orders by failing to provide required compliant meal
3 periods throughout the term of employment and/or failing to compensate said employees one (1)
4 hour of wages at their regular rate of compensation in lieu of meal periods;

5 d. Whether Defendants violated Labor Code § 226.7 and IWC Wage Order 4
6 -2001 or other applicable IWC Wage Orders by failing to provide all required compliant rest
7 periods throughout the term of employment and failing to compensate said employees one (1)
8 hours wages in lieu of rest periods;

9 e. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001
10 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to
11 issue accurate itemized wage statements to Plaintiff and the members of the Proposed Class;

12 f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
13 pay compensation due and owing at the time that any member of the Proposed Class's employment
14 with Defendant terminated;

15 g. Whether Defendants violated § 17200, *et seq.* of the Business & Professions
16 Code by engaging in the acts previously alleged; and

17 h. Whether Plaintiff and the members of the Proposed Class are entitled to
18 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

19 i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
20 acts alleged herein.

21 **C. TYPICALITY**

22 47. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
23 all members of the Proposed Class sustained injuries and damages arising out of and caused by
24 Defendants' common course of conduct in violation of laws, regulations that have the force and
25 effect of law, and statutes as alleged herein.

26 **D. ADEQUACY OF REPRESENTATION**

27 48. Plaintiff will fairly and adequately represent and protect the interests of the
28 members of the Proposed Class.

49. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

50. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of the Proposed Class is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to pay all wages due, failing to provide compliant meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

51. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

FIRST CAUSE OF ACTION

**PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS AGAINST
ALL DEFENDANTS FOR FAILURE TO PAY WAGES AND/OR OVERTIME UNDER
LABOR CODE §§ 510, 1194, 1194.2, AND 1199**

52. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

53. Labor Code §§ 1194 and 1194.2 and Code of Regulations, title 8, section 11040 also requires that every employer pay each employee not less than the applicable minimum wage for all hours worked. Labor Code §§ 510, 1194 and 1199 also require an employer to compensate its employees at one and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and double the employee's regular

1 rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in
2 excess of eight on the seventh consecutive day of work in a workweek.

3 54. Defendants willfully misclassified Plaintiff and the Proposed Class as independent
4 contractors though they were, in fact, employees of Defendant.

5 55. Defendants failed to properly compensate Plaintiff and the Proposed Class.

6 56. Defendants did not pay Plaintiff and the Proposed Class the legal minimum wage
7 applicable for all hours worked, as mandated by the State of California.

8 57. Plaintiff and the Proposed Class were forced to work on a regular and consistent
9 basis without receiving compensation for all hours worked at the proper rate. Specifically, Plaintiff
10 and the Proposed Class were not paid at the proper overtime rate when they were working more
11 than eight (8) hours in one day or forty (40) hours in one week.

12 58. By their policy of requiring Plaintiff and members of the Proposed Class to work
13 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
14 compensating them at the appropriate rate of pay, Defendants willfully violated the provisions of
15 Labor Code §§ 510, 1194 and 1199.

16 59. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
17 been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to
18 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

19 **VII.**

20 **SECOND CAUSE OF ACTION**

21 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS AGAINST**

22 **ALL DEFENDANTS FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

23 **PURSUANT TO LABOR CODE § 226.7 AND LABOR CODE § 512**

24 60. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
25 reference all previous paragraphs.

26 61. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
27 compensation for each meal period the employer fails to provide. Employees are entitled to a first
28 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the

1 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
2 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
3 no more than ten (10) hours of work. Defendants failed to maintain a policy informing Plaintiff
4 and the Proposed Class of these rights.

5 62. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
6 Defendants failed to provide Plaintiff and the Proposed Class with proper meal periods of not less
7 than thirty (30) minutes during the relevant time period all in violation of California labor laws,
8 regulations, and Industrial Welfare Commission Wage Orders.

9 63. Additionally, Defendants have a consistent policy of failing to pay Plaintiff and the
10 Proposed Class one (1) hour of pay at the employees' regular rate of compensation for each
11 workday that the compliant meal period was not provided. Very recently, on July 15, 2021, in
12 *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for
13 calculating the one extra hour of bonus pay that employees are owed if an employer fails to provide
14 a compliant meal period or rest break. Specifically, the Court held that those bonus payments must
15 include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses,
16 commissions, etc.), and cannot simply be paid at an employee's base hourly rate. Here, when meal
17 periods are provided, Defendants have a consistent policy of paying meal period premiums at the
18 base rate and not the appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

19 64. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
20 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
21 uninterrupted meal break, per day in a sum to be proven at trial.

22 VIII.

23 THIRD CAUSE OF ACTION

24 PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS AGAINST

25 ALL DEFENDANTS FOR FAILURE TO PROVIDE COMPLIANT REST PERIODS

26 PURSUANT TO LABOR CODE § 226.7

27 65. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
28 reference all previous paragraphs.

66. Labor Code § 226.7 requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof).

67. Defendants failed to maintain an accurate policy informing Plaintiff and the Proposed Class of their rights with respect to rest periods.

68. Defendants failed to provide Plaintiff and members of the Proposed Class with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period. As a result, Defendant failed to provide Plaintiff and the Proposed Class compliant rest periods.

69. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour of wages for each compliant rest period as required by Labor Code § 226.7 and *Ferra v. Loews Hollywood Hotel, LLC*. Here, when rest period premiums are provided, Defendants have a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code § 226.7.

70. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

IX.

FOURTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS AGAINST

ALL DEFENDANTS FOR VIOLATION OF LABOR CODE § 226(A)

71. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

72. Labor Code §226(a)(2) requires employers to furnish accurate itemized wage statements in writing that show total hours worked by the employee. Defendants furnish Plaintiff and members of the Proposed Class with itemized wage statements that do not accurately show total hours worked.

73. Labor Code §226(a)(6) requires employers to furnish accurate itemized wage

1 statements in writing that show the inclusive dates of the period for which the employee is paid.
2 Defendants failed to furnish itemized wage statements to Plaintiff and the Proposed Class members
3 that show the start and end dates for each pay period.

4 74. Labor Code §226(a)(9) requires employers to furnish accurate itemized wage
5 statements in writing that show all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee. Defendants furnish
7 Plaintiff and members of the Proposed Class with itemized wage statements that do not accurately
8 show all applicable hourly rates in effect during the pay period and the corresponding number of
9 hours worked at each hourly rate.

10 75. Further, Plaintiff and the Proposed Class are issued wage statements that do not
11 include accurate meal and rest premiums as a result of the claims alleged above.

12 76. Defendants' failure to provide accurate itemized wages statements according to
13 Labor Code § 226(a) was all done on a regular and consistent basis.

14 77. An employee suffering injury as a result of a knowing and intentional failure by an
15 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
16 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
17 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
18 aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and
19 reasonable attorneys' fees.

20 **X.**

21 **FIFTH CAUSE OF ACTION**

22 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS AGAINST**
23 **ALL DEFENDANTS FOR WAITING TIME PENALTIES UNDER LABOR CODE § 203**

24 78. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
25 reference all previous paragraphs.

26 79. Numerous members of the Proposed Class including the Plaintiff are no longer
27 employed by Defendant. They were either fired or quit Defendant's employ.

28 80. Defendants' failure to pay wages, as alleged above was willful in that Defendant

1 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
2 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
3 penalty until paid for a period of up to thirty (30) days from the time they were due.

4 81. Defendants failed to pay Plaintiff and others a sum certain at the time of termination
5 or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty
6 (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed
7 Class are entitled to a penalty in the amount of Plaintiff's and members of the Proposed Class's
8 daily wage multiplied by thirty (30) days.

9 **XI.**

10 **SIXTH CAUSE OF ACTION**

11 **PLAINTIFF ON BEHALF OF HERSELF**

12 **VIOLATION OF LABOR CODE §§ 226 AND 1198.5**

13 82. Plaintiff, on behalf of herself only, realleges and incorporates by reference all
14 previous paragraphs.

15 83. On October 31, 2022, Plaintiff mailed to Defendant her first written request to her
16 employer to copy or to receive a copy of her personnel file and payroll records. The letter cited
17 Labor Code §§ 226 and 1198.5. Defendant signed Plaintiff's certified mail receipt on November
18 3, 2022.

19 84. Defendant did not provide the documentation requested by Plaintiff within the
20 statutory time frames causing Plaintiff to mail a second written request to Defendant on December
21 1, 2022. Plaintiff received a returned certified mail receipt signed by Defendant on December 5,
22 2022, indicating receipt of Plaintiff's second written request.

23 85. Defendant did not provide the documentation requested by Plaintiff in her second
24 written request.

25 86. Labor Code § 226(f) provides that "[a] failure by an employer to permit a current
26 or former employee to inspect or copy records within the. . ." statutory time frame ". . . entitles the
27 current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar
28 (\$750) penalty from the employer."

87. Additionally, Labor Code §226(h) permits an employee to bring an action for injunctive relief to ensure compliance Labor Code § 226 and states that employee is entitled to an award of costs and reasonable attorney's fees.

88. Labor Code § 1198.5(a) states: “Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

89. Labor Code § 1198.5(k) provides that if an employer fails to permit an inspection or fails to permit an employee to copy personnel records within the times specified, the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

90. Additionally, Labor Code § 1198.5(l) permits an employee to bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

91. As such, Defendant has violated Labor Code §§ 226 and 1198.5 and Plaintiff is entitled to production of the documents requested, penalties, and attorney's fees and costs.

XII.

SEVENTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS AGAINST

ALL DEFENDANTS FOR UNFAIR COMPETITION PURSUANT TO BUSINESS &

PROFESSIONS CODE § 17200

92. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

93. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

1 94. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
2 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
3 appropriate equitable relief.

4 95. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
5 practices.

6 96. California’s wage and hour laws express fundamental public policies. Providing
7 employees with proper wages and compensation are fundamental public policies of this State and
8 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
9 vigorously minimum labor standards, to ensure that employees are not required or permitted to
10 work under substandard and unlawful conditions, and to protect law-abiding employers and their
11 employees from competitors who lower their costs by failing to comply with minimum labor
12 standards.

13 97. Defendants violated statutes and public policies as alleged herein. Through the
14 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
15 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
16 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
17 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
18 guaranteed to all employees under law.

19 98. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
20 violation of § 17200, *et seq.* of the Business & Professions Code.

21 99. Defendants, by engaging in the conduct herein alleged, either knew or in the
22 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
23 violation of § 17200, *et seq.* of the Business & Professions Code.

24 100. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
25 others similarly situated have been damaged in a sum as may be proven.

26 101. Unless restrained, Defendants will continue to engage in the unlawful conduct as
27 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
28 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or

1 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
2 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
3 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
4 Proposed Class the money Defendant has unlawfully failed to pay.

5 **XIII.**

6 **EIGHTH CAUSE OF ACTION**

7 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

8 102. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
9 incorporates by reference all previous paragraphs.

10 103. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
11 seeks penalties under Labor Code §2699, *et seq.* use of Defendants' violation of Labor Code §§
12 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199; Wage Order 4-2001; and
13 California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

14 104. Plaintiff brings this representative action on behalf of herself and the State of
15 California as well as on behalf of a group of aggrieved employees defined as: All home healthcare
16 workers who are employed or have been employed for GENUS HOME CARE, INC; GENUS
17 HOME CARE, INC. OF SAN BERARDINO in the State of California who worked one or more
18 pay periods since January 19, 2022 to the present. ("aggrieved employees").

19 105. In addition to the wage, meal period, rest period, itemized wage statement, and
20 penalty claims alleged in detail above, Plaintiff also alleges a misclassification violation as the
21 basis for a PAGA claim on behalf of the aggrieved employees. Defendant misclassified Plaintiff
22 and the aggrieved employees as independent contractors when they were employees.

23 106. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
24 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
25 present, Defendant has violated Labor Code § 226.8. Labor Code § 226.8 makes it unlawful for
26 any person or employer to willfully misclassify an individual as an independent contractor. (See
27 *Dynamex Operations West, Inc. v. Superior Court*, (2018) 4 Cal.5th 903, 951.)

28 107. Defendants willfully misclassified Plaintiff and other aggrieved employees as

1 independent contractors though they were, in fact, employees.

2 108. Defendants' failure to properly classify Plaintiff and all aggrieved employees as
3 employees was done on a regular and consistent basis.

4 109. As a result of the acts alleged above, Plaintiff, on behalf of herself and all other
5 aggrieved employees, seeks penalties under Labor Code § 2699, et seq. because of Defendants'
6 violation of Labor Code § 226.8, for which a civil penalty applies under PAGA.

7 110. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §
8 2699, *et seq.* because of Defendants' violation of Labor Code §§ 201, 202, 203, 226, 226(a), 226.7,
9 226.8, 510, 512, 1194, 1194.2, 1198.5, 1199, and Wage Order 4-200, which call for civil penalties.

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

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

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

14 112. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
15 twenty-five percent (25%) to the affected employees.

16 113. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded an amended notice letter
17 to the LWDA² and mailed a letter by certified mail to each of the Defendants' entity address, as
18 proscribed by the Code on February 23, 2023, describing Defendants' conduct in violation of
19 Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 226.8, 510, 512, 1194, 1194.2, 1198.5, and 1199,
20 and IWC Wage Order 4-2001. (*see* Exhibit "1.") Plaintiff obtained an e-filing confirmation from
21 the LWDA confirming receipt of the notice (*see* Exhibit "2").

22 114. As no letter evidencing the LWDA's intention to investigate was received by
23 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
24 action as though the LWDA had not chosen to investigate pursuant to Labor Code
25 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
26 Amended Class and Representative Action Complaint immediately.

27 ² Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid minimum wages and/or wages and overtime not paid to Plaintiff and each member of the Proposed Class from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each member of the Proposed Class's hourly wage at the appropriate regular rate of compensation for each non-compliant meal period from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each member of the Proposed Class's hourly wage for each non-compliant rest period from at least four (4) years prior to the filing of this action to the present as may be proven;

4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

5. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

6. On behalf of herself only, Plaintiff requests penalties pursuant to Labor Code §§ 226(f) and 1198.5(k) and injunctive relief pursuant to Labor Code §§ 226(h) and 1998.5(k) for violation of Labor Code §§ 226 and 1998.5;

7. An award of prejudgment and post judgment interest;

8. An order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 226.8, 510, 512, 1194, 1194.2, 1199, and IWC 4-2001;

9. For restitution for unfair competition pursuant to Business & Professions Code

1 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

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

3 11. An award of attorneys' fees; and

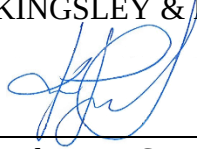
4 12. Such other and further relief as this Court may deem proper and just.

5 **DEMAND FOR JURY TRIAL**

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

7
8 DATED: May 1, 2023

KINGSLEY & KINGSLEY, APC

9
10 By: 

Kelsey M. Szamet

11 Attorneys for Plaintiff SHALONDA YOUNG and
12 the Proposed Class
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EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

February 23, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Genus Home Care, Inc.
1476 W. 9th Street Ste B1
Upland, CA 91786
Via Certified Mailing #7022 3330 0002 1335 5904

Genus Home Care, Inc. of San Bernardino
Agent for Service of Process
Ali Saad
421 N Brookhurst ST, Ste 120
Anaheim, CA 92801
Via Certified Mailing #7022 3330 0002 1335 5898

Re: SHALONDA YOUNG v. GENUS HOME CARE, INC.; GENUS HOME CARE, INC. OF SAN BERNARDINO
California Labor Code § 2699 Penalties – Amended LWDA Letter

Gentlepersons:

This office represents Shalonda Young (“Plaintiff”) and a proposed group of current and former employees working for GENUS HOME CARE, INC; GENUS HOME CARE, INC. OF SAN BERNARDINO (“Defendants”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* This is an amended notice letter which shall serve to incorporate and supplement the letter from our office on or about January 19, 2023. In that January 19, 2023 notice letter, we named the second Defendant as “Genus Home Care of San Bernardino” inadvertently omitting the “Inc.” from “Genus Home Care, Inc. of San Bernardino”. In an abundance of caution, we provide this supplemental letter and herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All home healthcare workers who are employed or have been employed for GENUS HOME CARE, INC; GENUS HOME CARE, INC. OF SAN BERNARDINO in the State of California who worked one or more pay periods

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

February 23, 2023

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since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Labor Code § 226.8 makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. (See *Dynamex Operations West, Inc. v. Superior Court*, (2018) 4 Cal.5th 903, 951.) Defendants willfully misclassified Plaintiff and other aggrieved employees as independent contractors though they were, in fact, employees. Defendants’ failure to properly classify Plaintiff and all aggrieved employees as employees was done on a regular and consistent basis.

Defendants have failed to pay Plaintiff and all aggrieved employees proper wages for all hours worked at the proper corresponding rate in violation of Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and require an employer to compensate its employees at one and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek. Here, Plaintiff and other aggrieved employees were not paid all minimum wages owed and all wages at the proper corresponding rate for all hours worked, including overtime as a result of Defendants’ misclassification of these individuals as independent contractors. Plaintiff and other aggrieved employees regularly worked work in excess of eight hours in one workday and in excess of 40 hours in one workweek and were not compensated at the appropriate overtime rate for all hours worked including overtime for all hours worked over eight (8) in a day and/or forty (40) in a work week.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, 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. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendants failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendants have had a consistent

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

February 23, 2023

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policy of failing to provide compliant meal periods to Plaintiff and the aggrieved employees within the first five hours of each shift and pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendants have had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendants are required to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with all such required rest periods. Defendant failed to compensate Plaintiff and the aggrieved employees with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.

Defendants also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing (2) total hours worked by the employee, except as provided in subdivision (j), (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee (Labor Code §§ 226(a)(2),(6), (9)). The itemized wage statements provided to Plaintiff and the aggrieved employees did not accurately show the total hours worked by the employee, the inclusive dates of the pay period and, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Further, Plaintiff and other aggrieved employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do, they are not the accurate rate.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendants' employ. As such, Plaintiff is an aggrieved employee and Defendants failed to pay Plaintiff and all aggrieved employees all wages

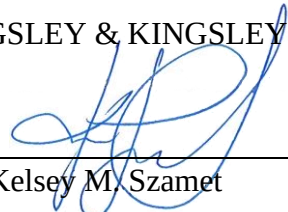
due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

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

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226, 226(a), 226.7, 226.8, 510, 512, 1194, 1194.2, 1198.5, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/lis

Cc: 1. Abramson Labor Group, 3580 Wilshire Blvd., Ste 1260, Los Angeles, CA 90010

EXHIBIT "2"



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Amended PAGA Claim Notice

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".
[Search for PAGA Case number](#)

Your Information (Attorney or Employee – Whoever is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Amended Notice Detail

Please provide the details of the amendments to the original notice. *

- ☐ Adding additional claims
- ☐ Adding additional corporate defendants
- ☐ Adding additional Individual/Sole proprietor defendants
- ☐ Adding additional plaintiffs
- ☒ Other (please specify)

Please specify "other" *

"Genus Home Care, Inc.
of San Bernardino".

Amended Notice

Amended Notice *

Amended PA...er - Genus.pdf

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

No file chosen

[Add Another Attachment](#)

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

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

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

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

[Click Here](#) to Search Case

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Thursday, February 23, 2023 2:17 PM
To: Service Email
Subject: Thank you for your Amended PAGA Claim Notice Submission.

External Email!

02/23/2023 02:16:48 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7CLealie%40kingsleykingsley.com%7Cc943999c20d24ab9878408db15ebafd1%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638127874255868615%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=7q5YpLmN2XxNPulQF2pfMvbp%2FoQ0kZIGrYo2Kn1G7nE%3D&reserved=0