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Attorneys for Plaintiff MARCELA MARTINEZ DE BAEZA,
an Individual, On Behalf of Herself, Other Aggrieved Employees,
and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARCELA MARTINEZ DE BAEZA,
an individual, on behalf of herself, all
other aggrieved employees, and the
general public,

Plaintiff,

vs.

ELI INC. WHICH WILL DO
BUSINESS IN CALIFORNIA AS
NALAS RESIDENTIAL FACILITY, a
Nevada Corporation; FLORA M.
CROW, an individual, and DOES 1
through 25, inclusive,

Defendants.

CASE NO. **23STCV19734**

COMPLAINT FOR:

- 1. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

1 Plaintiff MARCELA MARTINEZ DE BAEZA, an individual, hereby files this Complaint
2 (“Complaint”) against Defendants ELI INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS
3 NALAS RESIDENTIAL FACILITY, a Nevada Corporation, FLORA M. CROW, an individual,
4 and, DOES 1 through 25, inclusive, (hereinafter collectively referred to as, “Eli” or “Defendants”).
5 Plaintiff, in her representative capacity, is informed and believes and on the basis of that information
6 and belief alleges as follows:

7 **INTRODUCTION**

8 1. This representative lawsuit challenges Defendants’ employment practices with
9 respect to their non-exempt workers employed in the State of California as Caregivers (hereinafter
10 “Aggrieved Caregivers” or “Aggrieved Employees”), based on Defendants’ policy and practice of
11 failing, among other things, to provide payment for all hours worked at the applicable legal rates,
12 legally compliant meal and rest breaks, denying earned wages, including overtime pay, and failing to
13 provide accurate wage statements from June 12, 2022 to the present (“Relevant Time Period”). In
14 particular, Defendants fail to provide timely and adequate meal and rest breaks, fail to timely
15 compensate employees for all wages earned, and fail to properly and accurately calculate overtime
16 and report wages earned, hours worked, and wage rates.

17 2. At all times relevant hereto, and with certain defined exceptions, Defendants’
18 compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or
19 designated rates for all hours worked.

20 3. At all times relevant hereto, and with certain defined exceptions, Defendants’
21 compensation scheme did not fully compensate Plaintiff with overtime compensation for all
22 overtime hours worked.

23 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
24 failed to provide Plaintiff with adequate off-duty meal periods and meal period compensation in
25 violation of Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 5, section 11.

26 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
27 failed to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor
28 Code sections 226.7 and 516 and IWC Wage Order No. 5, section 12.

6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants' knowingly and intentionally utilized a timekeeping system and/or compensation scheme, which failed to compensate Plaintiff for all hours worked.

7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show all wages earned, all hours worked, or all applicable rates.

8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned, and meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 5 section 11.

9. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to pay Plaintiff all wages due and owing upon termination of employment including, but not limited to, payment of wages for missed meal and rest periods compensation.

10. In this case, Plaintiff seeks civil penalties established by Labor Code section 2699, the Private Attorneys General Act (“PAGA”), against Defendants for their unlawful employment practices.

PARTIES

Plaintiff Marciela Martinez de Baeza

11. Plaintiff Marciela Martinez de Baeza is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Plaintiff is a former employee of Defendants. She worked at Eli as a Caregiver from approximately December 2018 to October 2022. During her employment with Defendants, Ms. Baeza worked out of the adult residential care facility commonly known as Jaclyn's Home which is located at 276 North Wisconsin Street in Fallbrook, California. Plaintiff, like other similarly situated Aggrieved Caregivers, provided around the clock care to disabled patients and worked day and night coverage and assistance to patients housed at the Defendants' residential care facilities.

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1 ***Defendant Eli Inc. Doing Business in California as Nalas Residential Facility***

2 12. Plaintiff is informed and believes and based thereon alleges that Defendant Eli Inc.
3 Which Will Do Business in California as Nalas Residential Facility is a Nevada corporation and now
4 and/or at all times mentioned in this complaint, was licensed to do business, and actually doing
5 business in the state of California as Nalas Residential Facility and/or Nalas Residential Fac.
6 Jaclyn's Home. Eli is in the business of providing adult residential care facilities to individuals
7 suffering from debilitating medical conditions. Eli specifically owns and/or operates adult residential
8 care facilities in the counties of Los Angeles and San Diego.

9 ***Defendant Flora M. Crow***

10 13. Plaintiff is informed and believes and based thereon alleges that Defendant Flora M.
11 Crow is or was the owner, director, and Chief Executive Officer of Defendant Eli Inc. Which Will
12 Do Business in California as Nalas Residential Facility, and in her capacity as Defendant Eli Inc.
13 Which Will Do Business in California as Nalas Residential Facility's Chief Executive Officer was
14 responsible for making decisions on rates of pay, scheduling, and policies with respect to payment of
15 regular and overtime pay and wages, and the meal and rest period policies, practices, and
16 procedures. California law permits individuals that are named and charged with violations of the
17 Labor Code to be held liable on an individual basis as permitted by numerous Labor Code Sections
18 including, but not limited to 558, 558.1, and 1197.1.

19 ***Does 1 through 25***

20 14. DOES 1 through 25 inclusive are now and/or at all times mentioned in this Complaint
21 were, licensed to do business and/or actually doing business in the State of California. Plaintiff does
22 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
23 100, inclusive and for that reason, DOES 1 through 25 are sued under such fictitious names pursuant
24 to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this
25 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 25
26 are believed to be business entities who were also co-employers of the Plaintiff and the other
27 aggrieved employees.

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1 ***All Defendants***

2 15. Plaintiff is informed and believes and based thereon alleges that at all times herein
3 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
4 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
5 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
6 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
7 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
8 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
9 matters referred to herein.

10 16. Plaintiff is informed and believes and based thereon alleges that at all times herein
11 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated
12 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
13 damages alleged in this Complaint.

14 17. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
15 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
16 a joint venture, partnership, and common enterprise, and were acting within the course and scope of,
17 and in pursuit of said joint venture, partnership, and common enterprise and, as such were co-
18 employers of the Plaintiff and the other aggrieved employees.

19 18. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
20 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
21 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every
22 one of the other Defendants in proximately causing the injuries and/or damages alleged in this
23 Complaint.

24 **JURISDICTION AND VENUE**

25 19. This Court has jurisdiction over all causes of action herein pursuant to the California
26 Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code
27 § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because
28 Defendants operate in this County, Plaintiff resides in and/or worked in this county and the injuries

1 that are the subject of this lawsuit arose in this county.

2 **FACTUAL ALLEGATIONS**

3 ***Background***

4 20. Plaintiff Marciela Martinez de Baeza commenced her employment with Defendants
5 in or around December 2018 and separated from Eli in or around October of 2022. Throughout her
6 employment with Eli, Plaintiff was classified or categorized as a non-exempt employee but earned a
7 weekly fixed salary or wage of approximately \$379.60. In the last year of her employment and more
8 so towards the end of her tenure at Eli, Ms. Baeza was scheduled to work the weekend shift and
9 earned a fixed rate of \$350. During the last year of her employment, Plaintiff was also compensated
10 at one point at the rate of \$13 per hour. For the weekend shift, Ms. Baeza's shifts would start at 7:00
11 p.m. on Friday and would end at 7:00 p.m. on the following Monday. During that time, Ms. Baeza,
12 like other Aggrieved Caregivers, would not leave the facility over the weekend. On those weekend
13 shifts, Aggrieved Caregivers, including Plaintiff, would not record their time or clock in and out on a
14 timekeeping system. Similarly, when Ms. Baeza worked during the week, she was directed to record
15 her time at the end of the week, essentially recording her scheduled but not actual hours of work. On
16 shifts during the week and for weekend shifts, Ms. Baeza and other similarly situated Aggrieved
17 Caregivers would not record any meal breaks. The lump sum payments Ms. Baeza and other
18 Aggrieved Caregivers received each week equate to an hourly wage that is well below the state's
19 mandated minimum wage for employers.

20 ***Defendants' Failure to Pay Minimum Wages, including Overtime Payment***

21 21. IWC Wage Order, number 5 defines "hours worked" to mean "the time during which
22 an employee is subject to the control of an employer and includes all the time the employee is
23 suffered or permitted to work, whether or not required to do so."

24 22. Labor Code section 1182.12 and IWC Wage Order, number 5, section 4 formerly
25 provided that on and after January 1, 2021, the minimum wage shall be not less than fourteen dollars
26 (\$14.00) per hour.

27 23. Labor Code section 1182.12 and IWC Wage Order, number 5, section 4 provide that
28 on and after January 1, 2022, the minimum wage for all industries shall be not less than fifteen

1 dollars (\$15.00) per hour, that on and after January 1, 2023, the minimum wage for all industries
2 shall be not less than fifteen dollars and fifty cents (\$15.50) per hour.

3 24. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any
4 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage is
5 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage,
6 including interest thereon, reasonable attorney’s fees, and costs of suit.”

7 25. Labor Code section 1194.2(a) provides in relevant part: “In any action under Section
8 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
9 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
10 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

11 26. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
12 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
13 minimum so fixed is unlawful.”

14 27. Defendants’ Aggrieved Caregivers, including Plaintiff, are categorized and classified
15 as non-exempt employees and must be paid for all hours worked. Hours worked include, but are not
16 limited to, all hours that an employee is permitted or suffered to work including, but not limited to,
17 off-the-clock work that an employer either knew or should have known that an employee was
18 performing.

19 28. As a matter of policy and/or practice, Defendants routinely suffered or permitted their
20 Aggrieved Caregivers, including Plaintiff, to work portions of the day or night during which they
21 were subject to Defendants’ control, but Defendants failed to compensate them. As a matter of
22 policy and/or practice, Eli compensates Plaintiff and Aggrieved Employees by utilizing a “rounding”
23 type mechanism with respect to its timekeeping system for purposes of processing payroll which
24 results in the underpayment of wages. Alternatively, since Aggrieved Caregivers, including Plaintiff
25 are paid a flat sum of money for the work they perform, they are not paid the minimum wage for
26 each and every hour of work they perform even though Aggrieved Caregivers, including Plaintiff,
27 are providing services to Eli and are under Defendants’ control. Aggrieved Caregivers, including
28 Ms. Baeza, are exclusively paid an assigned rate of pay, with no overtime or double overtime

1 following work in excess of 8 and 12 hours, respectively. Aggrieved Caregivers, including Plaintiff
2 are paid weekly and according and corresponding to their assigned schedule. That means Aggrieved
3 Caregivers, including Plaintiff, are not paid for the *actual* time they are under the control and
4 direction of Defendants. Finally, Aggrieved Caregivers, including Plaintiff, are frequently required
5 to perform work during their purported meal and rest breaks.

6 29. Labor Code Section 1194 further provides that an employee receiving less than the
7 legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full
8 amount of this minimum wage or overtime compensation, including interest thereon, reasonable
9 attorney's fees, and costs of suit.

10 30. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
11 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
12 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
13 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
14 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
15 the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in
16 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less
17 than twice the regular rate of pay of an employee."

18 31. Throughout the Relevant Time Period, Wage Order No. 5-2001 provided for payment
19 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
20 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for
21 payment of overtime wages equal to double the employee's regular rate of pay for all hours worked
22 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)
23 hours on the seventh (7th) day of work in any one workweek.

24 32. Plaintiff was classified as non-exempt by Defendants and was therefore entitled to
25 payment for all hours worked, including overtime compensation for all hours worked in excess of
26 the hours and time specified in the Wage Order, statutes and regulations identified herein.

27 33. As a matter of policy and/or practice, Plaintiff and Aggrieved Caregivers were
28 frequently required to perform work during their meal and rest breaks.

1 34. As a matter of policy and/or practice Defendants utilized a timekeeping system,
2 which failed to compensate Plaintiff and Aggrieved Caregivers for all hours worked, whether by
3 rounding, time-shaving, or otherwise.

4 35. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that
5 Defendants' policy, practice, and/or procedure of compensating Aggrieved Caregivers, including
6 Plaintiff, through an assigned fixed rate, when broken down by the actual hours of work results in
7 underpayment of wages that is well below the state's mandated minimum wage to be paid to
8 employees for employers. In Plaintiff's case, the \$350 weekend rate she received for work
9 scheduled from Friday 7:00 p.m. lasting to Monday night at 7:00 p.m. results in an hourly rate of pay
10 that is less than \$5 per hour, i.e., \$350 divided by 72 hours. Upon information and belief, at one
11 point during the last year of her employment with Eli, Plaintiff was also compensated at a rate of
12 \$13.00 which again is below the minimum wage adopted by the State of California

13 36. Throughout the Relevant Time Period, Defendants did not maintain adequate records
14 of all wages earned, hours worked, and meal and rest breaks taken.

15 37. Accordingly, Defendants failed to properly record the actual hours worked by
16 Plaintiff and Aggrieved Caregivers and thus failed to pay minimum wages and overtime wages for
17 the actual amount of minimum and overtime hours worked.

18 ***Defendants' Failure to Provide Adequate and Timely Meal and Rest Breaks***

19 38. Aggrieved Caregivers, including Plaintiff, are also prevented from taking their
20 statutorily mandated meal and rest breaks due to Eli's scheduling practices and that the nature of the
21 work does not relieve them from all duty. As referenced above, Aggrieved Caregivers, including
22 Ms. Baeza, do not record any meal breaks during shifts. Nor does Eli, upon information and belief,
23 have any formal policies in place with respect to meal and rest breaks. Further, due to the nature of
24 the work handled by Aggrieved Caregivers, Aggrieved Caregivers including Plaintiff take their
25 mandated breaks on premises. As a result, rest breaks are truly never "duty free" and likewise are cut
26 short due to the press of work. Aggrieved Caregivers, including Plaintiff, who worked over 12 hours
27 in a day are also not provided with a mandated second meal period.

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1 39. Plaintiff is further informed and believes and based thereon alleges that Defendants
2 rarely, if ever, issue any compensation to Aggrieved Caregivers for missed, late or shortened meal
3 and/or rest breaks.

4 40. Plaintiff is informed and believes and based thereon alleges that as a matter of policy
5 and/or practice, Defendants routinely failed to provide Aggrieved Caregivers, including Plaintiff,
6 with meal periods during which they were relieved of all duties. Defendants did this by requiring
7 Plaintiff and the other Aggrieved Caregivers to essentially work through their meal periods.

8 41. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 9 a. Failed to provide Plaintiff and the other Aggrieved Caregivers with a first meal period
10 of not less than thirty (30) minutes during which they were relieved of all duty before
11 working more than five (5) hours;
- 12 b. Failed to provide Plaintiff and other Aggrieved Caregivers with a second meal break
13 of not less than (30) minutes during which they were relieved of all duty before
14 working more than ten (10) hours; and
- 15 c. Failed to pay Plaintiff and the other Aggrieved Caregivers one hour of pay at their
16 regular rate of compensation for each workday that a meal period was not provided.

17 42. Plaintiff is further informed and believes and based thereon alleges that as a matter of
18 policy and/or practice, Defendants routinely failed to provide their non-exempt employees, including
19 Plaintiff and other Aggrieved Caregivers, with rest breaks during which they were relived of all
20 duties. Defendants did this by requiring Plaintiff and the other Aggrieved Caregivers to essentially
21 work through their rest breaks.

22 43. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 23 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and
24 Aggrieved Caregivers were relieved of all duty for each four (4) hours of work;
- 25 b. Failed to compensate Plaintiff and the other Aggrieved Caregivers for break time
26 when breaks were taken; and
- 27 c. Failed to pay Plaintiff and the other aggrieved employees one (1) hour of pay at their
28 regular rate of compensation for each workday that a rest period was not permitted.

1 44. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number
2 5, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for
3 each four (4) hours of work, during which employees are relieved of all duty.

4 45. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order,
5 number 5, section 12 required employers to pay one hour of additional pay at the regular rate of
6 compensation for each employee and each workday that a proper rest period is not provided.

7 46. Throughout the Relevant Time Period, Plaintiff and the other aggrieved employees
8 were routinely denied the meal and rest breaks they were entitled to under California law.

9 ***Defendants' Failure to Provide Accurate, Itemized Wage Statements***

10 47. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number
11 5, section 7 required employers to maintain adequate employment records and provide employees
12 with accurate itemized wage statements showing gross wages, total hours worked, all applicable
13 hourly rates worked during each pay period, the corresponding number of hours worked at each
14 hourly rate, and meal breaks taken.

15 48. Defendants' wage statements are facially non-compliant by virtue of the defective
16 meal and rest period policies and practices, the uncompensated work, the unlawful timekeeping
17 systems which does not accurately record the total hours worked by Aggrieved Caregivers, including
18 Plaintiff.

19 49. Wage statements provided to Plaintiff and the other Aggrieved Caregivers by
20 Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of
21 the Labor Code section 226, and IWC Wage Order number 5, section 7.

22 50. Moreover, Defendants did not maintain adequate records of all wages earned, hours
23 worked, and breaks taken.

24 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

25 51. At all times relevant hereto, Labor Code § 201 required an employer that discharges
26 an employee to pay compensation due and owing to said employee immediately upon discharge.
27 Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due
28 and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor

1 Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon
2 discharge or resignation, as required under Sections 201 and 202, then the employer is liable for
3 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

4 52. Defendants willfully and knowingly failed to pay Plaintiff and the other Aggrieved
5 Caregivers, upon termination of employment, all accrued compensation including payment of
6 minimum wage compensation, missed meal and rest periods compensation and for time spent
7 performing work off the clock at Defendants' direction.

8 ***Exhaustion of Administrative Remedies***

9 53. Plaintiff has complied with the procedures for bringing suit specified in California
10 Labor Code Section 2699.3. By letter dated June 12, 2023, Plaintiff, on behalf of herself and the
11 other Aggrieved Caregivers, gave written notice by electronic mail and certified mail to the Labor
12 and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the
13 California Labor Code alleged to have been violated, including the facts and theories to support the
14 alleged violations. Attached as **Exhibit "1"** is a true and correct copy of the referenced letter.

15 54. More than sixty-five (65) calendar days have passed since Plaintiff provided the
16 LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified
17 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
18 herein.

19 **FIRST CAUSE OF ACTION**

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

21 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

22 55. Plaintiff incorporates by reference the allegations set forth above.

23 56. As set forth above, Plaintiff has complied with the procedures for bringing suit
24 specified in California Labor Code Section 2699.3. By letter dated June 12, 2023, Plaintiff, on
25 behalf of himself and the other aggrieved employees, gave written notice by certified mail to the
26 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have
27 been violated, including the facts and theories to support the alleged violations. More than sixty-five
28 (65) calendar days have passed since Plaintiff provided the LWDA with written notice. To date,

1 Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to
2 investigate the violations of the California Labor Code alleged herein.

3 57. This action arises out of the allegedly unlawful labor practices of Defendants in
4 California. Through this private attorneys' general action, Plaintiff represents himself, and other
5 aggrieved employees of Defendants that were in California, against whom Defendants have
6 allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful
7 conduct described herein, Plaintiff now seeks to recover civil penalties, attorneys' fees, and costs,
8 pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.*

9 58. Labor Code Section 1198 makes it unlawful for an employer to employ an employee
10 under conditions that violate the applicable Wage Order.

11 59. Plaintiff is informed and believes that throughout the Relevant Time Period,
12 Defendants have applied centrally devised policies and practices to Plaintiff and the other aggrieved
13 employees with respect to wages, hours, and working conditions.

14 **Failure to Pay Minimum Wages and Designated Rates**

15 60. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
16 that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to
17 employees and the payment of a wage less than the minimum so fixed is unlawful. Additionally,
18 Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that
19 violate the applicable Wage Order.

20 61. Where any statute or contract requires an employer to maintain the designated wage
21 scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while
22 purporting to pay the wage designated by statute or by contract.

23 62. At all relevant times, Defendants maintained a policy and practice of requiring
24 Plaintiff and the other aggrieved employees to remain under Defendants' control without paying
25 therefore, which resulted in them earning less than the legal minimum wage in the State of
26 California for all hours worked. At all relevant times, Defendants maintained a policy and practice of
27 requiring Plaintiff and the other aggrieved employees to remain under Defendants' control, while
28 purportedly on a meal and rest break, and without paying therefor, which resulted in them earning

1 less than the legal minimum wage in the State of California for all hours worked.

2 63. As a matter of policy and/or practice, Defendants utilized a timekeeping system,
3 which failed to compensate Plaintiff and other aggrieved employees for all hours worked, whether
4 by rounding, time-shaving, or otherwise. Specifically, our investigation leads us to believe that
5 Defendants' knowledge of work transpiring during day and night shifts, has resulted in Plaintiff and
6 other Aggrieved Employees not being compensated for all hours worked. Moreover, the fixed sum
7 or flat rate of money Defendants pay or have paid Aggrieved Caregivers, including Plaintiff, has
8 resulted in payment of an hourly wage that is below the minimum rates set forth by the California
9 legislature.

10 64. Defendants' failure to pay Plaintiff and other Aggrieved Caregivers minimum wages
11 and designated violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and
12 other aggrieved employees are entitled to recover civil penalties pursuant to sections 1197.1 and
13 2699(a), (f), and (g).

14 **Failure to Pay Overtime Compensation**

15 65. Labor Code Section 1194 provides that an employee receiving less than the legal
16 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount
17 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
18 fees, and costs of suit.

19 66. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
20 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
21 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
22 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
23 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
24 the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in
25 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less
26 than twice the regular rate of pay of an employee."

27 67. Throughout the Relevant Time Period, Wage Order No. 5-2001 provided for payment
28 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all

1 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for
2 payment of overtime wages equal to double the employee's regular rate of pay for all hours worked
3 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)
4 hours on the seventh (7th) day of work in any one workweek.

5 68. Plaintiff and the other aggrieved employees were classified as non-exempt by
6 Defendants and were therefore entitled to overtime compensation for all hours worked in excess of
7 the hours and time specified in the Wage Order, statutes and regulations identified herein.

8 69. As a matter of policy and/or practice, Plaintiff and the other aggrieved employees
9 were frequently required to performed work during meal and rest breaks.

10 70. As a matter of policy and/or practice, Defendants utilized a timekeeping system,
11 which failed to compensate Plaintiff and other aggrieved employees for all hours worked, whether
12 by rounding, time-shaving, or otherwise. Specifically, our investigation leads us to believe that
13 Defendants' knowledge of work transpiring during day and night shifts, has resulted in Plaintiff and
14 other Aggrieved Employees not being compensated for all hours worked. Moreover, Aggrieved
15 Caregivers, including Plaintiff, are paid exclusively an assigned rate of pay or flat sum, with no
16 overtime or double overtime following work in excess of 8 and 12 hours, respectively.

17 71. Accordingly, Defendants failed to properly record the actual hours worked by
18 Plaintiff and other aggrieved employees, and thus failed to pay overtime wages for the actual amount
19 of overtime hours worked.

20 **Failure to Provide Timely and Adequate Meal and Rest Breaks**

21 72. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative
22 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal
23 periods of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide
24 them with two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work
25 period of more than ten (10) hours.

26 73. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from
27 requiring employees to work during required meal periods and require employers to pay non-exempt
28 employees an additional hour of premium wages on each workday that the employee is not provided

1 with a required meal period.

2 74. At relevant times during the applicable limitations period, Defendants failed to
3 provide Plaintiff and Aggrieved Caregivers with uninterrupted meal periods of at least thirty
4 (30) minutes on each day that they worked five (5) or more hours, as required by Labor Code
5 Section 512 and the Wage Order, as a result of duties and schedules that do not permit them to take
6 all legally required meal periods. Plaintiff is informed, believes, and thereon alleges that, at relevant
7 times during the applicable limitations period, Defendants maintained a policy or practice of not
8 providing the other aggrieved employees with uninterrupted meal periods of at least thirty
9 (30) minutes for each five (5) hour work period, as required by Labor Code Section 512 and the
10 Wage Order, as a result of duties and schedules that do not permit them to take all legally required
11 meal periods.

12 75. Section 12 of the Wage Order imposes an affirmative obligation on employers to
13 permit and authorize employees to take required rest periods at a rate of no less than ten (10) minutes
14 of net rest time for each four (4) hour work period, or major portion thereof, that must be in the
15 middle of each work period insofar as is practicable.

16 76. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from
17 requiring employees to work during required rest periods and require employers to pay non-exempt
18 employees an additional hour of premium wages on each workday that the employee is not provided
19 with the required rest period.

20 77. At relevant times during the applicable limitations period, Defendants failed to
21 provide Plaintiff and Aggrieved Caregivers with a net rest period of at least ten (10) minutes for each
22 four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result of
23 duties and schedules that do not permit Plaintiff and Aggrieved Caregivers to take all legally
24 required rest breaks.

25 78. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the
26 applicable limitations period, Defendants maintained a policy or practice of not providing the other
27 aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work
28 period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules

1 that do not permit them to take all legally required rest breaks.

2 79. Plaintiff is further informed, believes, and thereon alleges that Defendants rarely, if
3 ever, issues any compensation to Aggrieved Caregivers for missed, late or shortened meal and/or rest
4 breaks.

5 **Failure to Provide and Maintain Compliant Wage Statements**

6 80. Labor Code Section 1174 requires that every person employing labor in this state
7 shall keep (1) a record showing the names and addresses of all employees employed and the ages of
8 all minors; (2) at a central location in the state or at the plants or establishments at which employees
9 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
10 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
11 the respective plants or establishments; (3) such records in accordance with rules established for this
12 purpose by the commission, but in any case, on file for not less than three years. This statute also
13 prevents an employer from prohibiting an employee from maintaining a personal record of hours
14 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
15 keep the records required by Section 1174.

16 81. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved
17 employees were entitled to receive, semimonthly or at the time of each payment of wages, an
18 accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable
19 hourly rates in effect during the pay period; and (d) the corresponding number of hours worked at
20 each hourly rate by the employee.

21 82. Defendants failed to provide Plaintiff with accurate itemized statements in accordance
22 with California Labor Code Section 226(a) by providing Plaintiff with wage statements with
23 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of
24 the unlawful labor and payroll practices described herein.

25 83. Plaintiff is informed and believes and thereon alleges that, at all relevant times during
26 the applicable limitations period, Defendants maintained a policy or practice of not providing
27 aggrieved employees with accurate itemized wage statements by providing them with wage
28 statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and

1 deductions from wages earned as a result of the unlawful labor and payroll practices described
2 herein.

3 84. Plaintiff is informed and believes and thereon alleges that Defendants' failure to
4 provide her and the other aggrieved employees with accurate written wage statements is knowing
5 and intentional.

6 85. Plaintiff is informed and believes and thereon alleges that Defendants had the ability
7 to provide her and the aggrieved employees with accurate wage statements, but intentionally
8 provided wage statements that they knew are not accurate.

9 86. As a result of being provided with inaccurate wage statements by Defendants,
10 Plaintiff and the aggrieved employees have suffered an injury. Their legal rights to receive accurate
11 wage statements were violated and they were misled about the amount of wages they had actually
12 earned and were owed. In addition, the absence of accurate information on their wage statements
13 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and
14 mathematical computations to determine the amounts of wages owed, has caused difficulty and
15 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
16 inaccurate information about wages and amounts deducted from wages to state and federal
17 government agencies.

18 87. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on
19 behalf of themselves and other current or former employees, to bring a civil action to recover civil
20 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

21 **Failure to Pay Wages Upon Termination**

22 88. Labor Code Section 201 provides that all earned and unpaid wages of an employee
23 who is discharged are due and payable immediately at the time of discharge.

24 89. Labor Code Section 202 provides that all earned and unpaid wages of an employee
25 who quits after providing at least 72-hours' notice before quitting are due and payable at the time of
26 quitting and that all earned and unpaid wages of an employee who quits without providing at least
27 72-hours' notice before quitting are due and payable within 72 hours.

28 90. Labor Code Section 203 provides that the wages of an employee continue on a daily

1 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
2 unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

3 91. Plaintiff is informed and believes that Defendants' failure to timely pay them all of
4 their earned and unpaid wages, including unpaid minimum wages and overtime wages, and
5 unprovided rest and meal period premium wages, have been willful in that, at all relevant times,
6 Defendants have deliberately maintained policies and practices that violate the requirements of the
7 Labor Code and the Wage Order even though, at all relevant times, they have had the ability to
8 comply with those legal requirements.

9 **Section 558 Penalties**

10 92. The PAGA claims are also brought against Defendants pursuant to provisions of the
11 labor code including § 558 which permits liability of persons or employers who violate or cause to
12 be violated Labor Code and IWC regulations. California Labor Code Section 2699.

13 93. The PAGA states:

14 Notwithstanding any other provision of law, any provision of this code that
15 provides for a civil penalty to be assessed and collected by the Labor and
16 Workforce Development Agency or any of its departments, divisions,
17 commissions, boards, agencies, or employees, for a violation of this code, may, as
18 an alternative, be recovered through a civil action brought by an aggrieved
19 employee on behalf of himself or himself and other current or former
20 employees...

21 94. One provision of law enforceable through PAGA as to civil penalties, though not
22 unpaid wages, is Labor Code § 558, which states the following:

23 (a) Any employer or other person acting on behalf of an employer who violates,
24 or causes to be violated, a section of this chapter or any provision regulating hours
25 and days of work in any order of the Industrial Welfare Commission shall be
26 subject to a civil penalty as follows:

27 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
28 each pay period for which the employee was underpaid in addition to any amount
sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
employee for each pay period for which the employee was underpaid in addition
to an amount sufficient to recover underpaid wages...

26 **Penalties Authorized by PAGA**

27 95. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other
28 aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for

1 Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 223,
2 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198, and 2698
3 *et seq.*, during the applicable limitations period in the following amounts:

- 4 a. For violations of California Labor Code sections 201, 202, 203, 226.7, and 1198,
5 one hundred dollars (\$100.00) for each aggrieved employee per pay period for each
6 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per
7 pay period for each subsequent violation (penalty amounts established by California
8 Labor Code Section 2699(f)(2));
- 9 b. For violations of California Labor Code Section 1194-1197.1, one hundred
10 dollars (\$100.00) for each aggrieved employee per pay period for each initial
11 violation and two hundred dollars and fifty (\$250.00) for each aggrieved
12 employee per pay period for each subsequent violation regardless of whether the
13 initial violation is intentionally committed (penalty amounts established by
14 California Labor Code § 1197.1);
- 15 c. For violations of California Labor Code Sections 216, 221, 223 one hundred
16 dollars (\$100.00) for each aggrieved employee for each initial violation and two
17 hundred dollars (\$200.00) for each aggrieved employee for each subsequent or
18 willful violation (penalty amounts established by California Labor Code §
19 225.5);
- 20 d. For violations of California Labor Code Section 1174, five hundred dollars
21 (\$500.00) for each of Defendants' violations in addition to any other penalties or
22 fines permitted by law (penalty amounts established by California Labor Code §
23 1174.5);
- 24 e. For violations of California Labor Code Section 226, two hundred fifty dollars
25 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00)
26 per employee for each subsequent violation (penalty amounts established by
27 California Labor Code Section 226.3);
- 28 f. For violations of California Labor Code Section 204, one hundred dollars (\$100.00)

per employee for initial violation and two hundred dollars (\$200.00) per employee for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code Section 210);

g. For violations of California Labor Code section 510, 511, 512, 551, 552 and, Wage Order 5-2001 Sections 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code Section 558).

h. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid; for each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code Section 558).

96. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff on behalf of herself and on behalf of all other Aggrieved Employees, prays for judgment against Defendants as follows:

- a. Civil penalties;
- b. Other penalties and fines permitted by law;
- c. Costs of suit;
- d. Reasonable attorneys' fees;
- e. Pre-judgment and post-judgment interest as provided by law; and
- f. Such other and further relief as the Court deems just and proper.

1 DATED: August 17, 2023

BOYAMIAN LAW, INC.

2
3 By: 
4 Michael H. Boyamian
5 Attorneys for Plaintiff MARCELA
6 MARTINEZ DE BAEZA, an Individual, On
7 Behalf of Herself, Other Aggrieved
8 Employees, and the General Public
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