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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

VICTOR H. CASTRO, an individual, on
behalf of the State of California,

Plaintiff,

v.

ASPEN SKILLED HEALTHCARE, INC., a
California corporation; ATBA, LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO.:

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

[California Labor Code § 2698, *et seq.*]

1. Plaintiff Victor H. Castro (“Plaintiff”) brings this representative action on behalf of the State of California, pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), against Defendants Aspen Skilled Healthcare, Inc., ATBA, LLC, and Does 1 through 10, inclusive (collectively, “Defendants”). Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

INTRODUCTION

2. Defendants have implemented common policies and practices that have resulted in systematic violations of California’s Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order(s). Accordingly, Plaintiff, on behalf of the State of California, brings this representative action to recover civil penalties for the California Labor and Workforce Development Agency (“LWDA”) and all other aggrieved employees—i.e., non-exempt employees who worked for Defendants in California during the statute of limitations period—predicated on Defendants’ failure to provide legally compliant meal periods and rest breaks, and failure to provide compensation for missed and otherwise unlawful meal periods and rest breaks, unpaid regular, minimum, and overtime wages, failure to timely pay wages, failure to pay all wages owed and due to discharged or quitting non-exempt employees, failure to maintain required records, failure to provide accurate itemized wage statements, and failure to reimburse employees for business-related expenses.

JURISDICTION AND VENUE

3. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident of the State of California and Defendants regularly conduct business in the State of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

4. Venue is proper in this judicial district and the County of San Joaquin because Plaintiff and other aggrieved employees performed work for Defendants in the County of San Joaquin, and a substantial portion of the unlawful actions and omissions, as alleged herein, occurred in the County of San Joaquin.

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THE PARTIES

5. Plaintiff worked as a janitor/maintenance worker, a non-exempt position, for Defendants at one of their nursing homes in Tracy, California, from approximately 1997 to August 2022.

6. On information and belief, Defendant Aspen Skilled Healthcare, Inc., is a California corporation that, at all times relevant herein, has done business in the State of California by owning and operating nursing homes.

7. On information and belief, Defendant ATBA, LLC, is a California limited liability company that, at all times relevant herein, has done business in the State of California by owning and operating nursing homes.

8. On information and belief, and at all times material herein, there has been common ownership or financial control between Defendants. They were the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each was the alter ego of the other.

9. Moreover, at all material times herein, there has been extensive interrelation of operations, common management, centralized control of labor relations, human resources, staffing issues, payroll, etc., with respect to Plaintiff and other non-exempt employees of Defendants. In short, Defendants jointly employed or exercised control over the wages, hours, and working conditions of Plaintiff and other non-exempt employees of Defendants, and all Defendants are jointly and severally liable for the wage-and-hour violations experienced by Plaintiff and other non-exempt employees of Defendants.

10. The true names and capacities of Does 1 through 10, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such Defendants under fictitious names. Plaintiff is informed and believes, and thereon alleges, that each Defendants designated as a Doe is in some manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such

1 Doe Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
2 names and capacities of such Doe Defendants when ascertained.

3 **REPRESENTATIVE ACTION ALLEGATIONS**

4 11. On July 27, 2023, Plaintiff gave written notice by certified mail pursuant to California
5 Labor Code § 2699.3, to the LWDA and Defendants, of the specific provisions of the California
6 Labor Code alleged to have been violated, including the facts and theories to support the alleged
7 violations. Within sixty-five (65) calendar days of the postmark date of Plaintiff's notice letter, the
8 LWDA did not inform Plaintiff that it intends to investigate the alleged violations, nor did
9 Defendants respond to or rectify any of the allegations contained in the notice letter. Therefore,
10 Plaintiff has complied with all requirements set forth in California Labor Code § 2699.3 to
11 commence a representative action under the PAGA.

12 12. Plaintiff has worked as a non-exempt employee for Defendants during the statute of
13 limitations period. Plaintiff also personally experienced violations of the California Labor Code
14 during his employment with Defendants, as alleged herein.

15 **FACTUAL ALLEGATIONS**

16 **Failure to Provide Required Meal Periods**

17 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 11]**

18 13. During the statute of limitations period, Defendants have required, permitted or
19 otherwise suffered Plaintiff and other aggrieved employees to perform work during their meal
20 periods, to completely skip their meal periods, to take late and short meal periods, and Defendants
21 have otherwise failed to provide the required meal periods to Plaintiff and other aggrieved employees
22 as required under California Labor Code §§ 226.7, 512, and IWC Wage Order No. 5-2001, § 11.

23 14. Defendants have implemented several common policies and practices that have caused
24 Plaintiff and other aggrieved employees to systematically miss and otherwise take non-compliant
25 meal periods.

26 15. Defendants regularly did not allow aggrieved employees to take a full thirty-minute
27 meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5
28 hours), and interrupted (work was performed during the meal period). More specifically, Defendants

1 failed to implement adequate policies or procedures to provide meal periods to their non-exempt
2 employees. Among other things, Defendants grossly understaff the job site, overwork aggrieved
3 employees, and do not adequately notify aggrieved employees of their rights to take meal periods. In
4 addition, aggrieved employees were required to carry phones on their person at all times, and
5 consequently, their meal periods would regularly be interrupted and/or cut short because they would
6 be forced to communicate on these devices during meal periods.

7 16. Despite work conditions that systematically result in missed and non-compliant meal
8 periods, and in order to keep labor costs down, Defendants have implemented a policy and practice of
9 failing to pay meal period premium payments when owed and due. Thus, Defendants have also
10 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order by failing to
11 compensate Plaintiff and other aggrieved employees who were not authorized and permitted to take a
12 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
13 regular rate of pay for each workday that such a meal period was not authorized or permitted.

14 **Failure to Provide Required Rest Breaks**

15 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12]**

16 17. During the statute of limitations period, Defendants have failed to authorize and
17 permit Plaintiff and other aggrieved employees to take rest breaks as required under California Labor
18 Code §§ 226.7 and 512, and IWC Wage Order No. 5-2001, § 12.

19 18. The same or similar policies and practices that deprive Plaintiff and other aggrieved
20 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
21 take their rest breaks.

22 19. As with meal periods, Defendants' policies and practices caused aggrieved employees
23 to miss or otherwise take non-compliant rest breaks by, among other things, giving them
24 unreasonable amounts of work that had to be completed within their shift such that rest breaks simply
25 could not be taken. This was the result of systematic understaffing and unrealistic work expectations
26 and requirements. Further, as set forth above, Defendants implemented skeletal staffing policies,
27 which resulted in the inability of aggrieved employees to take compliant rest breaks. In addition,
28 Defendants did not adequately notify aggrieved employees of their rights to take rest breaks, and

1 systematically denied them the opportunity to take breaks. And, as with meal periods, aggrieved
2 employees were required to carry phones on their person at all times, frequently resulting in
3 interrupted rest breaks.

4 20. Defendants further violated California Labor Code § 226.7 and IWC Wage Order No.
5 1-2001, § 12, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
6 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
7 proper regular rate of pay for each workday that a rest break was not provided.

8 **Failure to Pay Overtime Wages**

9 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3]**

10 21. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001, §
11 3, Defendants are required to compensate Plaintiff and other aggrieved employees for all overtime,
12 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
13 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
14 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
15 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
16 consecutive day of work in any workweek.

17 22. During the statute of limitations period, Defendants failed to compensate Plaintiff and
18 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
19 of the California Labor Code and IWC Wage Order by, *inter alia*, failing to properly calculate the
20 regular rate of pay for the purposes of calculating overtime wages owed and due by not including the
21 value of non-discretionary bonuses and other forms of remuneration required to be included in the
22 regular rate; requiring, permitting or suffering Plaintiff and other aggrieved employees to work off-
23 the-clock, including during meal periods and rest breaks but not compensating them for this time, and
24 failing to include this time in all hours worked; and other methods to be discovered.

25 23. Defendants have knowingly and willfully refused to perform their obligations to
26 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
27 violation of California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 5-2001, § 3.

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1 **Failure to Minimum Wages**

2 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

3 24. Pursuant to California Labor Code §§ 1194, 1197, and § 4 of the applicable IWC
4 Wage Order, payment to an employee of less than the applicable minimum wage for all hours worked
5 in a payroll period is unlawful.

6 25. During the statute of limitations period, Defendants paid Plaintiff and other aggrieved
7 employees at or slightly above minimum wage. This practice, in conjunction the fact that Defendants
8 have required, suffered, or permitted Plaintiff and other aggrieved employees to work off-the-clock,
9 including during meal periods and rest breaks, but not compensating them for this time, unlawfully
10 and inaccurately recording time that Plaintiff and other aggrieved employees worked, and other
11 methods to be discovered, has resulted in the systematic underpayment of minimum wages.

12 **Failure to Timely Pay Wages During Employment**

13 **[Cal. Lab. Code § 204]**

14 26. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
15 15th days of any calendar month, Defendants are required to pay their nonexempt employees between
16 the 16th and 26th day of the month during which the labor was performed. California Labor Code §
17 204 also provides that for all labor performed between the 16th and 26th days of any calendar month,
18 Defendants are required to pay their non-exempt employees between the 1st and 10th day of the
19 following calendar month. In addition, California Labor Code § 204 provides that all wages earned
20 for labor in excess of the normal work period shall be paid no later than the payday of the next
21 regular payroll period.

22 27. During the statute of limitations period, Defendants have knowingly and willfully
23 failed to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the
24 next regular payroll period as required by California Labor Code § 204.

25 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

26 **[Cal. Lab. Code §§ 201, 202, 203]**

27 28. Pursuant to California Labor Code §§ 201, 202 and 203, Defendants are required to
28 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201

1 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
2 the time of discharge are due and payable immediately.

3 29. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay
4 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
5 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
6 which case the employee is entitled to his or wages at the time of quitting.

7 30. California Labor Code § 203 provides that if an employer willfully fails to pay, in
8 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
9 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
10 compensation to the employee at the same rate for up to 30 workdays.

11 31. During the statute of limitations period, Defendants have willfully failed to pay
12 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance with
13 California Labor Code §§ 201 and 202.

14 32. Defendants have failed to implement an adequate policy to provide discharged or
15 quitting employees with their final paycheck within the time frames set forth above. For example,
16 Plaintiff was terminated on or about August 1, 2022, but Defendants did not provide him with his
17 final paycheck on this date. Further, because Defendants have failed and continue to fail to properly
18 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime wages,
19 and compensation for missed and non-compliant meal periods and rest breaks, Defendants have also
20 willfully failed and continue to fail to pay accrued wages and other compensation to Plaintiff and
21 other aggrieved employees in accordance with California Labor Code §§ 201 and 202. *Almanzar v.*
22 *Home Depot U.S.A., Inc.*, No. 2:20-cv-0699-KJN, 2022 WL 2817435, at *12 (E.D. Cal. Jul. 19, 2022)
23 ("The California Supreme Court's decision in *Naranjo* eliminates the anticipated defense that, as a
24 matter of law, non-payment of meal and rest break premiums cannot form the basis of derivative
25 claims under § 203 or § 226.")

26 **Failure to Maintain Required Records**

27 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 5-2001, § 7]**

28 33. During the relevant statute of limitations period, Defendants have knowingly and

1 intentionally failed to maintain records as required under California Labor Code §§ 226(a) and
2 1174(d) and IWC Wage Order No. 5-2001, § 7, including but not limited to, the following records:
3 total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods;
4 time records showing when each employee begins and ends each work period; and accurate itemized
5 statements. Defendants do not provide non-exempt employees with proper meal periods and rest
6 breaks, but omit from the wage statements such compensation and/or remuneration owed and due.
7 Additionally, Defendants require non-exempt employees to work off-the-clock but fail to record this
8 time or compensate them for this time, which invariably results in inaccurate time and payroll
9 records.

10 **Failure to Furnish Accurate Itemized Wage Statements**

11 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 5-2001, § 7]**

12 34. During the statute of limitations period, Defendants have routinely failed to provide
13 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
14 Defendants' pay stubs violate California Labor Code § 226 in that Defendants have not provided
15 Plaintiff and other aggrieved employees with proper meal and rest periods, but failed to include in
16 their wage statements one (1) additional hour of compensation at their regular rates of pay for each
17 missed or non-compliant meal, rest, or recovery period. *See Naranjo v. Spectrum Sec. Servs., Inc.*
18 (2022) 13 Cal.5th 93, 972 ("failure to report premium pay for missed breaks can support monetary
19 liability under section 226 for failure to supply an accurate itemized statement reflecting an
20 employee's gross wages earned, net wages earned, and credited hours worked.").

21 35. In addition, Defendants do not properly pay Plaintiff and other aggrieved employees
22 regular, minimum, and overtime wages owed and due to them, resulting in inaccurate wage
23 statements. Defendants also suffer and permit Plaintiff and other aggrieved employees to work off-
24 the-clock without compensation, yet such compensation and/or remuneration is not listed on the wage
25 statements.

26 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

27 **[Cal. Lab. Code § 2802]**

28 36. California Labor Code § 2802(a) requires an employer to indemnify an employee for

1 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
2 of her his or her duties, or of his or her obedience to the directions of the employer.

3 37. During the statute of limitations period, Defendants have failed to indemnify Plaintiff
4 and other aggrieved employees for all business expenses and/or losses incurred in direct consequence
5 of the discharge of their duties while working under Defendants' direction, including but not limited
6 to, usage of their personal cellular phones, in violation of Cal. Lab. Code § 2802.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT**

9 **[Cal. Lab. Code § 2698, *et seq.*]**

10 ***(Against all Defendants)***

11 38. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 37.

13 39. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §
14 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and
15 former non-exempt employees of Defendants pursuant to the procedures specified in California
16 Labor Code § 2699.3, because Plaintiff was employed by Defendants, and one or more of the alleged
17 California Labor Code violations was committed against Plaintiff during the statute of limitations
18 period.

19 40. Pursuant to California Labor Code § 2699, Plaintiff seeks to recover civil penalties
20 under the PAGA, for Defendants' violations of the provisions of the California Labor Code and IWC
21 Wage Order alleged herein.

22 41. All civil penalties sought and recovered under this action will be allocated as follows:
23 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
24 aggrieved employees.

25 42. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
26 Labor Code § 2699(g)(1).

27 **PRAYER FOR RELIEF**

28 **WHEREFORE**, Plaintiff, on behalf of the State of California, prays for relief against

1 Defendants as follows:

- 2 1. For civil penalties pursuant to California Labor Code § 2699 according to proof;
- 3 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §
- 4 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
- 5 providing for attorneys' fees and costs; and
- 6 3. For such further relief that the Court may deem just and proper.
- 7

8 DATED: October 2, 2023

THE WAND LAW FIRM, P.C.

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10 By:  _____

11 Aubry Wand

12 *Attorney for Plaintiff*

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