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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/10/2023 at 08:29:03 PM
Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

Attorney for ERIKA AGUIRRE,
Individually and on behalf of all other similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ERIKA AGUIRRE, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

CONTINUUM CARE OF SAN DIEGO, INC
dba BrightStar Care, a California Corporation;
and DOES 1 through 50, Inclusive;

Defendants.

Case No. 37-2023-00043954-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

Civil Penalties Pursuant to Labor Code §2699,
et seq., for violations of Labor Code §§ 201,
202, 203, 204, 226(a), 226.3, 226.7, 510, 512,
558, 1194, 1197, 1197.1, 1198, 2802, and the
California Code of Regulations

Judge:
Dept:

Date Action Filed:

Plaintiff ERIKA AGUIRRE ("PLAINTIFF") on behalf of the people of the State of
California and as "AGGRIEVED EMPLOYEE" acting as a private attorney general under the
Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
information and belief, except for her own acts and knowledge which are based on personal
knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings this action against CONTINUUM CARE OF SAN DIEGO dba
BrightStar Care ("DEFENDANT") ("DEFENDANT" or "DEFENDANTS") seeking only to
recover PAGA civil penalties for herself, and on behalf of all current and former aggrieved
employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other**
than penalties as permitted by California Labor Code § 2699. To the extent that statutory
violations are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or

1 special damages for those violations in this action, but simply the civil penalties permitted by
2 California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning her right to pursue
3 her individual claims for, *inter alia*, Defendant's alleged wage violations, and/or general or special
4 damages arising from those violations, and she fully intends to, at a future date, pursue claims for
5 those individual claims and damages.

6 2. California has enacted the PAGA to permit an individual to bring an action on behalf of
7 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
8 action.

9 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT'S
10 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any
11 other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be
12 construed as attempting to obtain any relief that would not be available in a PAGA-only action.

13 **THE PARTIES**

14 4. Defendant CONTINUUM CARE OF SAN DIEGO dba BrightStar Care ("DEFENDANT")
15 is a California corporation that at all relevant times mentioned herein conducted and continues to
16 conduct substantial business in the state of California, County of San Diego. Defendant provides
17 independent living skills program for the disabled.

18 5. The true names and capacities, whether individual, corporate, subsidiary, partnership,
19 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
20 PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ.
21 Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names
22 and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed
23 and believes, and based upon that information and belief allege, that the Defendants named in this
24 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively with
25 "DEFENDANTS"), are responsible in some manner for one or more of the events and happenings
26 that proximately caused the injuries and damages hereinafter alleged.

27 6. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
28 behalf of the DEFENDANTS acted within the course and scope of her, her or its authority as the

1 agent, servant and/or employee of the DEFENDANTS, and personally participated in the conduct
2 alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged herein.
3 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
4 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for the
5 loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or
6 employees.

7 7. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
8 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
9 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
10 regulating hours and days of work in any order of the Industrial Welfare Commission and, as such,
11 are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
12 relevant times.

13 8. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
14 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
15 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
16 employee a wage less than the minimum fixed by California state law, and as such, are subject to
17 civil penalties for each underpaid employee.

18 9. PLAINTIFF is a resident of California and was employed by DEFENDANTS as a non-
19 exempt employee, paid on an hourly basis and entitled to minimum wages, overtime pay, and legally
20 compliant meal and rest periods from December 12, 2019 to April 4, 2023.

21 10. PLAINTIFF is informed and believes, and thereon alleges that at all times hereinafter
22 mentioned, DEFENDANTS were and are subject to the Labor Code and IWC Wage Orders as
23 employers, whose employees were and are engaged throughout this county and the State of
24 California.

25 11. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS have
26 increased their profit by violating state wage and hour laws by, among other things:

- 27 a. Failing to pay all wages (including minimum wages and overtime wages);
- 28 b. Failing to provide lawful meal periods or compensation in lieu thereof;

- 1 c. Failing to authorize or permit lawful rest breaks or provide compensation in lieu
2 thereof;
3 d. Failing to provide accurate itemized wage statements;
4 e. Failing to pay all wages due upon separation of employment.

5 12. Plaintiff, on behalf of herself and all AGGRIEVED EMPLOYEES presently or formerly
6 employed by DEFENDANT during the PAGA PERIOD, bring this representative action pursuant
7 to Labor Code §2699, *et seq.* seeking penalties for DEFENDANT’S violations of California Labor
8 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5,
9 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and 2698, *et seq.* and the applicable Wage Orders.
10 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
11 employees within the meaning of Labor Code § 2699, *et seq.*

12 **JURISDICTION AND VENUE**

13 13. This is a representative action pursuant to Private Attorneys General Act of 2004 (Cal. Lab.
14 Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the minimal
15 jurisdictional limits of the Superior Court and will be established according to proof at trial.

16 14. This Court has jurisdiction over this action pursuant to the California Constitution, Article
17 VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those given by
18 statutes to other courts. The statutes under which this action is brought do not specify any other basis
19 for jurisdiction.

20 15. This Court has jurisdiction over all DEFENDANTS because, upon information and belief,
21 they are citizens of California, have sufficient minimum contacts in California, or otherwise
22 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
23 over them by the California courts consistent with traditional notions of fair play and substantial
24 justice.

25 16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395
26 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times maintained
27 caregiving facilities in this County and/or conducts substantial business in this County, and (ii)
28

1 committed the wrongful conduct herein alleged in this County against AGGRIEVED
2 EMPLOYEES.

3 **THE CONDUCT**

4 17. During the PAGA PERIOD, DEFENDANT failed to accurately calculate and pay
5 PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked, including minimum
6 and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately calculate wages
7 for time worked and penalties for meal and rest periods owed to PLAINTIFF and other
8 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct compensation.
9 As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited wages due to them for
10 working without compensation at the correct minimum wage and overtime rates. DEFENDANT'S
11 uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct compensation
12 for all time worked in accordance with applicable law is evidence by DEFENDANT's business
13 records.

14 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to
15 pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time
16 during which an employee is subject to the control of an employer, including all the time the
17 employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and AGGRIEVED
18 EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control.
19 Specifically, DEFENDANT required PLAINTIFF to work while clocked out. As a result, the
20 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
21 compensation by regularly working without their time being accurately recorded and without
22 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy
23 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
24 evidenced by DEFENDANT's business records.

25 19. In violation of the applicable sections of the California Labor Code and the requirements of
26 the Industrial Welfare Commission ("IWC") Wage Orders, DEFENDANT as a matter of company
27 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and
28 the other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked and correct

1 meal premium pay for all meal period violations. This uniform policy and practice of DEFENDANT
2 is intended to purposefully avoid the payment of the correct overtime compensation as required by
3 California law which allowed DEFENDANT to illegally profit and gain an unfair advantage over
4 competitors who complied with the law. To the extent equitable tolling operates to toll claims by
5 the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted
6 accordingly.

7 20. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required off-
8 duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the applicable
9 Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and Aggrieved
10 Employees did not prevent these employees from being relieved of all of their duties for the legally
11 required off-duty meal periods. DEFENDANT'S meal period policies and practices were unlawful
12 because PLAINTIFF and other Aggrieved Employees were far too over-booked and overworked to
13 take a timely off-duty thirty (30) minute meal period. As a result of their rigorous work schedules,
14 PLAINTIFF and other Aggrieved Employees were often not fully relieved of duty by DEFENDANT
15 for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the
16 Aggrieved Employees with legally required meal breaks prior to their fifth (5th) hour of work is
17 evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the
18 Aggrieved Employees forfeited meal breaks without additional compensation and in accordance
19 with DEFENDANT's strict corporate policy and practice.

20 21. Further, DEFENDANT failed to provide PLAINTIFF and Aggrieved Employees with a
21 second off-duty meal period on workdays in which these employees were required by
22 DEFENDANT to work ten (10) hours of work from time to time. As a result, DEFENDANT'S
23 failure to provide PLAINTIFF and the Aggrieved Employees with legally required meal breaks is
24 evidenced by DEFENDANT's business records which contain no record of these breaks.

25 22. In addition, DEFENDANT failed to compensate PLAINTIFF and Aggrieved Employees for
26 their rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
27 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other Aggrieved
28 Employees. As a result, DEFENDANT's failure to provide PLAINTIFF and the Aggrieved

1 Employees with all the legally required paid rest periods is evidenced by DEFENDANT's business
2 records.

3 23. On information and belief, PLAINTIFF and other Aggrieved Employees were required to
4 work while not clocked in. DEFENDANT maintained a company-wide policy of refusing to pay
5 Aggrieved Employees, like PLAINTIFF, for all hours worked, even during training. Specifically,
6 DEFENDANT maintained a company-wide pattern and practice of altering employees' timecards
7 to eliminate numerous hours worked. As a result, DEFENDANT failed to compensate PLAINTIFF
8 and the Aggrieved Employees wages for all hours worked.

9 24. Under California law, every employer shall pay to each employee, on the established payday
10 for the period involved, not less than the applicable minimum wage for all hours worked in the
11 payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.
12 Hours worked is defined in the applicable Wage Order as "the time during which an employee is
13 subject to the control of an employer, and includes all the time the employee is suffered or permitted
14 to work, whether or not required to do so.

15 25. From time to time, when DEFENDANT did not accurately record PLAINTIFF'S and other
16 Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper minimum
17 wages, the wage statements issued to PLAINTIFF and other Aggrieved Employees by
18 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). Aside, from
19 the violations listed above in this paragraph, DEFENDANT failed to issue PLAINTIFF and
20 Aggrieved Employees an itemized wage statement that lists all the requirements under California
21 Labor Code 226 *et seq.*

22 26. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
23 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other
24 Aggrieved Employees for required business expenses incurred by the PLAINTIFF and other
25 Aggrieved Employees in direct consequence of discharging their duties on behalf of DEFENDANT.
26 Under California Labor Code Section 2802, employers are required to indemnify employees for all
27 expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
28 states that "an employer shall indemnify his or her employee for all necessary expenditures or losses

1 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
2 obedience to the directions of the employer, even though unlawful, unless the employee, at the time
3 of obeying the directions, believed them to be unlawful."

4 27. In violation of the applicable sections of the California Labor Code and the requirements of
5 the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
6 policy, practice and procedure, intentionally, knowingly and systematically failed to compensate
7 PLAINTIFF and the other Aggrieved Employees for missed meal and rest periods. This uniform
8 policy and practice of DEFENDANT is intended to purposefully avoid the payment for all time
9 worked as required by California law which allows DEFENDANT to illegally profit and gain an
10 unfair advantage over competitors who complied with the law. To the extent equitable tolling
11 operates to toll claims by the Aggrieved Employees against DEFENDANT, the PAGA PERIOD
12 should be adjusted accordingly.

13 28. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
14 DEFENDANT failed to properly calculate and/or pay all required compensation for work performed
15 by the members of the CALIFORNIA CLASS and violated the California Labor Code and
16 regulations promulgated thereunder as herein alleged.

17 29. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-
18 duty meal breaks to her and paid rest periods to her as required by the applicable Wage Order and
19 Labor Code. DEFENDANT failed to compensate PLAINTIFF for her missed meal and rest breaks.
20 The nature of the work performed by PLAINTIFF did not prevent her from being relieved of all of
21 her duties for the legally required off-duty meal periods. Further, DEFENDANT failed to provide
22 PLAINTIFF with a second off-duty meal period each workday in which PLAINTIFF was required
23 by DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT'S failure to provide
24 PLAINTIFF with the legally required second off-duty meal period is evidenced by DEFENDANT's
25 business records. From time to time, and as a result of DEFENDANT not accurately recording all
26 missed meal and rest periods, and failing to pay minimum wages due for all time worked, the wage
27 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor
28 Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due to

1 her and all premiums due to her for missed meal and rest breaks and DEFENDANT has failed to
2 pay any penalty wages owed to her under California Labor Code Section 203.

3 30. From time-to-time DEFENDANTS required PLAINTIFF, and AGGRIEVED
4 EMPLOYEES to perform pre-shift work, including but not limited to, cleaning a patient's home
5 and preparing food for the patient before clocking in to start her shift. Further, as discussed *supra*,
6 PLAINTIFF and AGGRIEVED EMPLOYEES were from time to time interrupted with work
7 assignments during their off-duty meal periods without additional compensation from
8 DEFENDANT.

9 31. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work
10 performed by PLAINTIFF and the AGGRIEVED EMPLOYEES.

11 32. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
12 with an accurate itemized wage statement in writing showing, among other things, gross wages
13 earned and all applicable hourly rates in effect during the pay period and the corresponding amount
14 of time worked at each hourly rate. From time to time, DEFENDANT violated Cal. Lab. Code §
15 226 by failing to provide accurate wage statements. Additionally, DEFENDANT violated Cal. Lab.
16 Code § 226(a)(8) by failing to list the correct legal entity that employed PLAINTIFF.
17 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
18 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT provided
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violate Cal.
20 Lab. Code § 226 *et seq.*

21 33. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any employment
22 are due and payable twice during each calendar month, on days designated in advance by the
23 employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly requires employers
24 to pay employees all wages owed within seven (7) days of the close of the payroll period.
25 DEFENDANT from time to time failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
26 all wages owed to them within seven (7) days of the close of the payroll period.

27 34. By reason of this uniform conduct applicable to PLAINTIFF and all AGGRIEVED
28 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails to

1 accurately calculate and record the correct compensation for all time worked by PLAINTIFF and
2 other AGGRIEVED EMPLOYEES. The proper calculation of these employees' compensation is
3 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation
4 to meet this burden, DEFENDANT fails to properly calculate and/or pay all required compensation
5 for work performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code
6 and regulations promulgated thereunder as herein alleged.

7 35. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
8 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during
9 the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
10 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157
11 (Certified for Publication 12/19/18).

12 **FIRST CAUSE OF ACTION**

13 **For Violation of the Private Attorneys General Act**

14 **[Cal. Lab . Code §§ 2698 ET SEQ. ("PAGA")]**

15 **(By PLAINTIFF and Against All DEFENDANTS)**

16 36. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs as
17 though fully set forth herein, the prior paragraphs of this Complaint.

18 37. PAGA is a mechanism by which the State of California itself can enforce state labor
19 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
20 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
21 a law enforcement action designed to protect the public and not to benefit private parties. The
22 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
23 citizens as private attorney generals to enforce the Labor Code. In enacting PAGA, the California
24 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
25 private attorneys general to recover civil penalties for Labor Code violations..."Stats. 2003, ch. 906,
26 § 1. Accordingly, PAGA claims cannot be subject to arbitration.

27 38. PLAINTIFF, and such persons that may be added from time to time who satisfy the
28 requirements and exhaust the administrative procedures under the Private Attorney General Act,

1 bring this Representative Action on behalf of the State of California with respect to herself and all
2 individuals who are or previously were employed by DEFENDANTS in California during the time
3 period of July 19, 2022 until the present (the "AGGRIEVED EMPLOYEES").

4 39. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for
5 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
6 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
7 violation of the Labor Code may, as an alternative, be recovered through civil action brought by an
8 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
9 to the procedures specified in Labor Code § 2699.3.

10 40. For all provisions of the Labor Code except those for which a civil penalty is
11 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
12 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
13 dollars (\$200) for each aggrieved employee per pay period for each subsequent pay period in which
14 Defendants violated these provisions of the Labor Code.

15 41. Defendant's conduct violates numerous Wage Orders and Labor Code sections
16 including, but not limited to, the following:

17 a. Violation of Labor Code § 201, 202, 203, 204, 210, 221, 226, 226.2, 226.3, 226.7,
18 227.3, 246, 510, 512, 1182.12, 1194, 1197, 1198, 2802, 2698 for failure to timely pay all earned
19 wages (including minimum wage and overtime wages) owed to Plaintiff and other aggrieved
20 employees during employment and upon separation of employment as herein alleged;

21 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
22 Plaintiff and other aggrieved employees failure to pay premium wages for missed meal periods and
23 herein alleged;

24 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other
25 aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

26 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
27 statements to Plaintiff and other aggrieved employees as herein alleged;

28

1 e. Violation of Labor Code § 1174 and 1174.5 for failure to maintain accurate and
2 complete records showing, among other things, the hours worked daily by and the wages paid to
3 aggrieved employees; and

4 f. Violation of Labor Code § 2800 and 2802 for failure to reimburse Plaintiff and other
5 aggrieved employees as herein alleged.

6 42. Plaintiff is an "AGGRIEVED EMPLOYEE" because she was employed by the
7 alleged violator and had one or more of the violations committed against her, and therefore is
8 properly suited to represent the interest of all the other AGGRIEVED EMPLOYEES.

9 43. On July 19, 2023, PLAINTIFF gave written notice by electronic submission to the
10 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
11 employer of the specific provisions of this code alleged to have been violated as required by Labor
12 Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The
13 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As
14 a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action
15 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
16 AGGRIEVED EMPLOYEES as herein defined.

17 44. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover
18 civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

19 45. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred
20 herein.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF, prays for judgment against each DEFENDANT, jointly and
23 severally, as follows:

24 1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

25 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
26 General Act of 2004;

- 1 b. An Award of penalties, attorneys' fees and costs of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code § 226, §1194 and §2699(g);
3 and
4 c. For such other relief as the Court deems just and proper.
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6 Dated: October 5, 2023

7 **BARVIÉ LAW, APC**

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9 By



10 NICOLE BARVIÉ, Esq.
11 Attorneys for Plaintiff(s)
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EXHIBIT 1

July 19, 2023

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	Continuum Care of San Diego, Inc. dba BrightStar Care 504 West Mission Avenue, Suite 206 Escondido, CA 92025 <i>Via Certified Mail</i>
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Re: **Notice of Violation of California Labor Code Sections 201, 202, 203, 204 et seq., 210, 218, 221, 226, 226(a), 226.2, 226.3, 226.7, 227.3, 233, 246 et seq., 510, 512, 558(a)(1)(2), 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, Violations of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or were previously employed by Defendant Continuum Care of San Diego, Inc. dba BrightStar Care., and any parent company in California, and classified as exempt and non-exempt employees during the time period of July 19, 2022 until a date determined by the Court. Our offices represent Erika Aguirre (hereinafter “Plaintiff”), and other Aggrieved Employees in a proposed lawsuit against, Continuum Care of San Diego, Inc. dba BrightCare, a California Corporation (“Defendant”). Plaintiff was employed by Defendant in California beginning December 12, 2019 to April 4, 2023 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to correctly calculate Plaintiff’s regular rate of pay for purposes of payment of overtime, premium pay, and sick time pay. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Lastly, Defendant failed to reimburse Plaintiff and other aggrieved employees for business expenses. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204 et seq. 210, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246 et seq., 510, 512, 558, 1174, 1174.5, 1182.12, 1194,





1194.2, 1197, 1197.1, 1198, 2800, 2802 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiffs seek to represent a group of Aggrieved Employees defined as all exempt and non-exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all Aggrieved California Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

Nicole Barvié
Attorney for Plaintiff