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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JACOB ALATRISTE,

Plaintiff,

vs.

IDEAL CARE CORP.; IDEAL CARE, LLC; BART G. THOMPSON; CHRISTINA GRANT; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 37-2024-00026575-CU-OE-CTL

**COMPLAINT FOR DAMAGES FOR:**

1) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
2) **FAILURE TO PAY MINIMUM WAGES;**
3) **FAILURE TO PAY OVERTIME;**
4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
5) **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
6) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
7) **FAILURE TO PROVIDE REST BREAKS;**
8) **FAILURE TO PROVIDE MEAL BREAKS;**
9) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
10) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
11) **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

**JURY TRIAL DEMANDED**

COMES NOW Plaintiff, JACOB ALATRISTE (hereinafter "Plaintiff"), and alleges as follows:

**PARTIES, JURISDICTION, and VENUE**

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Diego in this judicial district because Defendants IDEAL CARE CORP.; IDEAL CARE, LLC; BART G. THOMPSON; CHRISTINA GRANT; and DOES 1 to 25, inclusive (hereinafter collectively "IDEAL CARE" or "Defendant(s)") do business in the County of San Diego, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Diego is the subject of this action. Moreover, Plaintiff's damages sought herein exceed $35,000.

2. Plaintiff is a male resident of the County of San Diego, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant IDEAL CARE CORP. is a California corporation, doing business in the County of San Diego, State of California, and which employed Plaintiff. Plaintiff is informed and believes that at all times herein mentioned, Defendant IDEAL CARE, LLC is a California Limited Liability Company, doing business in the County of San Diego, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant BART G. THOMPSON is a male resident of the State of California, and the owner, managing agent, and/or director of IDEAL CARE CORP., and IDEAL CARE, LLC, and is being included in this lawsuit pursuant to Labor Code Section 558.1 as he controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Plaintiff is further informed and believes that at all times herein mentioned, Defendant CHRISTINA GRANT is a female resident of the State of California, and the owner, managing agent, and/or director of IDEAL CARE CORP., and IDEAL CARE, LLC, and is

being included in this lawsuit pursuant to Labor Code Section 558.1 as she controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants IDEAL CARE CORP., IDEAL CARE, LLC, BART G. THOMPSON, and CHRISTINA GRANT are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "IDEAL CARE".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

## GENERAL ALLEGATIONS

7. Plaintiff started working at IDEAL CARE on or around 2022 or 2023 as a caregiver. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's employment at IDEAL CARE ended on or around March 5, 2024.

8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment,

Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for IDEAL CARE at all of their locations in the state of California during the relevant PAGA period.

10. It is Plaintiff's position that IDEAL CARE has violated the following Labor Code

Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for IDEAL CARE at their various locations in the State of California during the relevant PAGA period.

11. IDEAL CARE violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because IDEAL CARE had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Moreover, Plaintiff was simply not paid for all hours worked. For instance, in an email to the company, Plaintiff stated that he worked approximately 116 hours during a pay period in July 2023, but was not paid for all of those work hours, including the current amount of overtime. As such, it is Plaintiff's position that he was shorted on hours and the company cut hours in an effort to pay him less in addition to the rounding/time shaving. Furthermore, and to the extent that Plaintiff and other aggrieved employees were forced to work through their meal periods and while "off the clock", the latter was akin to a minimum wage violation. Additionally, Plaintiff and others did an online training for which they were not compensated. Moreover, IDEAL CARE failed to provide its employees with proper and accurate reporting time pay.

12. Due to the above "off the clock" violations and unilateral reduction of hours worked, IDEAL CARE also violated Labor Code §510 because it failed to pay Plaintiff and aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and aggrieved employees' actual work hours, including the regular hours and the "off the clock" hours, entitled them to overtime compensation, however, IDEAL CARE did not compensate its

hourly, non-exempt employees with the correct amount of overtime due to the "off the clock" work and time shaving as described above and due to employees such as Plaintiff not getting credit for the actual hours they worked. Moreover, the overtime rates and hours on Plaintiff's paystubs were confusing and inaccurate. Furthermore, IDEAL CARE failed to include bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case. Even though Plaintiff's job title was that of a "caregiver", Plaintiff was in fact NOT a personal attendant under California law because Plaintiff unequivocally spent more than 20% of his time conducting duties such as cleaning, cooking, taking the client to doctor's appointments, and other such tasks. As a result, Plaintiff was entitled to the normal overtime requirements per California law and per Industrial Welfare Commission Wage Order no. 4/5, wherein he should receive 1.5 times his hourly rate for hours worked between 8 and 12 and for working over 40 hours per week, and two times his hourly rate for any hours above 12 in a shift.

13. IDEAL CARE also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/5 because it failed to provide Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. IDEAL CARE did not completely relieve Plaintiff and others of all duty during said rest periods. IDEAL CARE did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Plaintiff to take even one rest break per regular shift, especially since Plaintiff was responsible for supervising patients and always had to be on

watch. Furthermore, even if Plaintiff and others were able to take a rest break, it would very often be interrupted by patient needs and patient requests. As such, the concept of rest breaks was not consistently and properly implemented as a matter of company policy. As such, the culture as well as the policies and procedures of IDEAL CARE did not lend itself to the employees consistently receiving multiple statutory rest breaks wherein they were relieved of all work duties. The environment at IDEAL CARE was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

14. IDEAL CARE violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/5 because it failed to provide Plaintiff and other hourly, non-exempt employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. IDEAL CARE did not completely relieve Plaintiff and aggrieved employees of all duty during said meal periods. IDEAL CARE did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees, including Plaintiff, would often not be able to receive meal periods before the 5$^{th}$ hour worked that were actually uninterrupted. In fact, Plaintiff weren't able to take any full, uninterrupted meal breaks at all due to the nature of their work as caregivers and having to tend to client needs. Like the rest breaks, receiving a consistent thirty-minute <u>uninterrupted</u> and <u>timely</u> meal break was not part of the company culture and was not enforced by IDEAL CARE. Consequently, it was the normal practice and custom of IDEAL CARE not to authorize, permit, and enforce timely statutory meal periods. If IDEAL CARE had Plaintiff and aggrieved employees sign a meal period waiver, it would not be valid and enforceable since Plaintiff and other employees generally worked more than a 6-

hour shift. If IDEAL CARE had Plaintiff and aggrieved employees sign an on-duty meal period agreement wherein Plaintiff and other employees agreed to work through their meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve him of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for employees to revoke such an agreement even if it was signed. As such, aggrieved employees did not always receive statutory, timely meal periods during their employment. To the extent that IDEAL CARE argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at IDEAL CARE was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

15. Furthermore, during the relevant time period, and due to the above labor code

violations, IDEAL CARE failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Plaintiff was not compensated for his "off the clock" work and since Plaintiff did not receive proper and complete meal and/or rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204. IDEAL CARE was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. In addition, the information contained on the paystubs in terms of Plaintiff's hourly rates and hours worked were inaccurate, which constitutes a facial violation under Labor Code section 226. As such, IDEAL CARE did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

16. During the relevant time period, IDEAL CARE also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

17. IDEAL CARE also violated Labor Code § 203 because it willfully failed to pay Plaintiff and other aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

18. During the relevant time period, Plaintiff and other aggrieved employees incurred

necessary, business-related expenses and costs that were not reimbursed by IDEAL CARE. These costs include, but are not limited to, personal cell phones for work purposes and mileage reimbursement for use of their personal vehicles for work purposes. In terms of personal cell phone use, Plaintiff and others were reimbursed a very small amount per pay period, which was not sufficient. In addition, and for mileage reimbursement, company policy dictated that they provide a set amount for "gas" to Plaintiff and others, regardless of how many miles were actually driven. As such, the reimbursement for gas had no relation to the number of miles driven and was unlawful. Accordingly, IDEAL CARE was in violation of California Labor Code sections 2800 and 2802.

19. Furthermore, IDEAL CARE did not provide proper and correct/accurate sick pay that was also accurately delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246.

20. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558 and have engaged in business practices which violate Business and Professions Code Section 17200.

## FIRST CAUSE OF ACTION

## FAILURE TO COMPENSATE FOR ALL HOURS WORKED

**(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)**

**(Plaintiff against all named defendants and all DOE defendants)**

21. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.

22. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 4-2001/5-2001, California Code of

Regulations, Title 8, Section 11040/11050.

23. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked.

24. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

25. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

27. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

## SECOND CAUSE OF ACTION

## FAILURE TO PAY MINIMUM WAGES

**(California Labor Code Sections 1194, 1194.2, 1197)**

**(Plaintiff against all named defendants and all DOE defendants)**

28. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 27, inclusive, of this Complaint as though fully set forth herein.

29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 4-2001/5-2001, codified at California Code of

Regulations, Title 8, Section 11040/11050, subdivision 4.

30. Pursuant to IWC Wage Order no. 4-2001/5-2001, subdivision 2(K)/(H), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

31. During his employment, Plaintiff was regularly required as a matter of uniform policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours worked in violation of California Labor Code Section 1197 and the applicable California Industrial Wage Commission wage order(s).

32. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

33. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

34. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

## THIRD CAUSE OF ACTION

## FAILURE TO PAY OVERTIME

**(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11040/11050; California Labor Code Section 510)**

**(Plaintiff against all named defendants and all DOE defendants)**

35. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein.

36. Pursuant to Industrial Welfare Commission Order No. 4-2001/5-2001, Cal. Code of Regs., Title 8, Section 11040/11050, for the period of Plaintiff's employment, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

37. Plaintiff was a non-exempt employee entitled to the protections of the California Industrial Welfare Commission Order No. 4-2001/5-2001, California Code of Regulations, Title 8, Section 11040/11050.

38. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a single workday or forty (40) hours in a single workweek on numerous occasions.

39. Plaintiff was entitled to the above overtime premiums.

40. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past twelve (12) in a day.

41. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

42. Plaintiff worked at least one pay period in which he was not properly paid overtime within the three (3) years prior to the initiation of this lawsuit.

43. Defendants know or should know the actual dates of overtime worked, the amount of overtime worked, and the amount of unpaid overtime due.

44. As a proximate result of Defendants' violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this

Court.

45. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11040/11050, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

46. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

## FOURTH CAUSE OF ACTION

## FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

**(California Labor Code Section 226)**

**(Plaintiff against all named defendants and all DOE defendants)**

47. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 46, inclusive, of this Complaint as though fully set forth herein.

48. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

49. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, gross wages earned, including overtime, minimum wages, and premium pay for missed meal and rest breaks, net wages earned, total hours worked by the employee, and all deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

50. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars ($4,000), plus costs and reasonable attorney's fees.

51. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

52. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

## FIFTH CAUSE OF ACTION

## FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

**(California Labor Code Section 204)**

**(Plaintiff against all named defendants and all DOE defendants)**

53. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 52, inclusive, of this Complaint as though fully set forth herein.

54. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

55. At all times relevant during the liability period, Defendants failed to pay Plaintiff the full amount of all owed wages when due as required by California Labor Code Section 204.

56. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked, including overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

57. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

58. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

**SIXTH CAUSE OF ACTION**

**FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

**(California Labor Code Sections 201, 203)**

**(Plaintiff against all named defendants and all DOE defendants)**

59. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 58, inclusive, of this Complaint as though fully set forth herein.

60. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

61. Pursuant to California Labor Code Section 202, when an employee resigns, the employer must pay all compensation due and owing within 72 hours of resignation, or on the employee's last day of work, if the employee gives more than 72 hours notice of resignation.

62. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay, without abatement or reduction, any wages of an employee whose employment ends, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; however, the wages shall not continue for more than 30 days for failure to pay an employee owed wages.

63. After Plaintiff's employment with Defendants ended, Defendants willfully refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

65. Under this cause of action, Plaintiff also prays for attorney's fees and costs under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set

forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

66. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

**SEVENTH CAUSE OF ACTION**

**FAILURE TO GIVE REST BREAKS**

**(Plaintiff against all named defendants and all DOE defendants)**

67. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 66, inclusive, of this Complaint as though fully set forth herein.

68. Plaintiff brings this cause of action under the following laws, for the following reasons:

a. Title 8 of the California Code of Regulations Sections 11040/11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

b. Title 8 of the California Code of Regulations Sections 11040/11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;

c. Title 8 of the California Code of Regulations sections 11040/11050(20)(A), which penalizes the employer $50.00 for each initial violation, per employee, of any provision of the Wage Order, and $100.00 for each additional violation thereafter per employee; and

d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

69. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

70. Under this cause of action, Plaintiff prays for wages due to him under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

71. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

72. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

## EIGHTH CAUSE OF ACTION

## FAILURE TO GIVE MEAL BREAKS

**(Plaintiff against all named defendants and all DOE defendants)**

73. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

74. Plaintiff brings this cause of action under the following laws, for the following reasons:

a. California Labor Code section 512(a), which requires that employees be given a 30-

minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;

b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

c. California Industrial Welfare Commission Order No. 4/5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040/11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040/11050, which requires an employer to maintain records documenting its employees' meal periods;

e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A), as codified under California Code of Regulations Section 11040/11050, which penalizes the employer $50.00 for each initial violation, per employee, of any provision of the Wage Order, and $100.00 for each additional violation thereafter per employee; and

f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4/5) as enforceable law.

75. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040/11050 requires that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

76. Under this cause of action, Plaintiff prays for wages due to him under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

77. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

78. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

## NINTH CAUSE OF ACTION

## FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

**(Plaintiff against All Named Defendants and all DOE defendants)**

79. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

80. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

81. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of completing his job duties, which were not reimbursed by Defendant. These expenses include, but are not limited to, personal cell phones for work purposes and mileage reimbursement for use of their personal vehicles for work purposes. In terms of personal cell phone use, Plaintiff and others were reimbursed a very small amount per pay period, which was not sufficient. In addition, and for mileage reimbursement, company policy dictated that they provide a set amount for "gas" to Plaintiff and others, regardless of how many miles were actually driven. As such, the reimbursement for gas had no relation to the number of miles driven and was unlawful.

82. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

## TENTH CAUSE OF ACTION

## PRIVATE ATTORNEYS GENERAL ACT
**Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802)**

**(Plaintiff against IDEAL CARE and all DOE defendants)**

83. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 82, inclusive, of this Complaint as though fully set forth herein.

84. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated February 17, 2023, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

85. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

86. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

87. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

88. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of other current and former employees, including all current and former hourly, non-exempt employees who worked for IDEAL CARE in the State of California during the applicable PAGA Period.

89. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

90. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

91. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants for violating the Labor Code.

92. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual penalties/victim specific relief or underpaid wages for herself or other employees under this specific PAGA cause of action. Plaintiff has separate causes of action in this Complaint for individual wages but is not seeking wages through the PAGA action.

93. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, via 2698 and 2699 and any other Labor Codes/Industrial Welfare Commission Order (No. 4/5) violated based on the facts alleged in this Complaint.

94. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

## ELEVENTH CAUSE OF ACTION

## VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

**(California Business and Professions Code Section 17200)**

**(Plaintiff against IDEAL CARE CORP.; IDEAL CARE, LLC and all DOE defendants)**

95. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 94, inclusive, of this Complaint as though fully set forth herein.

96. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants constitutes unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

97. Defendant's violations of the California labor laws and the Labor Code

constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and other employees.

98. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in California Code of Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et seq.

99. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to multiple damages as specifically provided in California Business and Professions Code section 17200 et seq.

100. For the four years preceding the filing of this action, Plaintiff requests restitution of all monies and profits to be disgorged from Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

## PRAYER FOR RELIEF

1. For compensatory damages including lost past and future wages, overtime, commissions, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For special and consequential damages to the extent allowed by law;
3. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount according to proof;
4. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
5. For damages and penalties against Defendants under Labor Code section 226 for Plaintiff in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code section 203/204/210 against Defendants in an amount subject to proof at trial;
7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.

8. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
9. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
10. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
11. For the imposition of civil penalties and/or statutory penalties;
12. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698, and/or other applicable laws; and
13. Costs and expenses of suit incurred herein;
14. For all interest as allowed by law;
15. For such other and further relief as the Court deems just and proper.

DATED: June 6, 2024 MESSRELIAN LAW INC.

By______________________
Harout Messrelian, Esq.
Attorneys for Plaintiff Jacob Alatriste

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: June 6, 2024 MESSRELIAN LAW INC.

By______________________
Harout Messrelian, Esq.
Attorneys for Plaintiff Jacob Alatriste