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11 individually and on behalf of all others similarly situated

12 **IN THE SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SACRAMENTO**

14 MIGDALIA TIRADO, individually and on
15 behalf of all others similarly situated,

Case No. **25CV005199**

16 Plaintiff(s),

17 v.

18 IHSS - ELLAS IN HOME CARE LLC; and
19 DOES 1 through 100,

20 Defendant(s).

COMPLAINT

1. **Failure to Provide Compliant Meal Breaks**
2. **Failure to Provide Complaint Rest Breaks**
3. **Failure to Pay All Hours Worked**
4. **Failure to Pay All Overtime Owed**
5. **Failure to Reimburse Work-Related Expenses**
6. **Wage Statement Violation**
7. **Waiting Time Penalties**
8. **Violation of Unfair Competition**
9. **Private Attorneys General Act**

21 **RELEVANT PARTIES**

- 22 1. Plaintiff MIGDALIA TIRADO ("Plaintiff") is an adult resident of Sacramento County,
23 California, and was at all times relevant residing in Sacramento County, California.
- 24 2. Defendant IHSS - ELLAS IN HOME CARE LLC ("Defendant") is a California corporation
25 with its principal place of business located in Sacramento County, California. Defendant is
26 registered to and does conduct business in the State of California and is subject to the laws of the
27

1 State of California. All acts and omissions of Defendant employees as alleged herein occurred while
2 they were acting within the course and scope of their employment.

3 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
4 through 100, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such
5 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
6 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
7 informed and believes, and based on such information and belief alleges, that each of the fictitiously
8 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
9 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
10 and Doe Defendants are collectively referred to as “Defendants”.

11 **JURISDICTION AND VENUE**

12 4. This action is properly filed in Sacramento County because the acts and omissions that give
13 rise to Plaintiff’s claims took place in Sacramento County, and Defendants transact substantial
14 business in this County.

15 5. This Court has jurisdiction over Defendants because Defendants’ unlawful conduct as
16 alleged herein occurred in Sacramento County, California and Plaintiff suffered damages from such
17 conduct within Sacramento County, California.

18 **FACTUAL ALLEGATIONS**

19 6. At all times relevant, Plaintiff was Defendants’ employee.

20 7. Plaintiff was employed by Defendants from May 24, 2024 to August 12, 2024.

21 8. Defendants failed to provide Plaintiff with compliant meal breaks because Plaintiff regularly
22 missed meal breaks. Often, Plaintiff would be interrupted during meal breaks to perform work
23 related tasks. Despite not being provided with compliant meal breaks, Defendant did not pay
24 premium pay for these missed breaks at Plaintiff’s regular rate of pay.

25 9. Defendant failed to provide Plaintiff with compliant rest breaks because Plaintiff’s rest
26 breaks would often be interrupted to perform work related tasks. Despite not being provided with
27 compliant rest breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff’s
28 regular rate of pay.

1 10. Defendants failed to pay Plaintiff for all hours worked because Plaintiff was required to
2 work 60-hour shifts but was only paid for 40-hours.

3 11. Defendants failed to pay Plaintiff all overtime owed because Plaintiffs usually worked 8
4 hours in a day and 40 hours in a week and thus any unpaid time was necessarily overtime.

5 12. Defendants failed to reimburse Plaintiff for all work-related expenses because Plaintiff was
6 required to purchase toiletries and groceries for work use, but Defendants did not reimburse
7 Plaintiff for these expenses.

8 13. Defendants failed to provide Plaintiff with accurate wage statements because the wage
9 statements issued to Plaintiff did not accurately list total wages owed and hours worked, among
10 other things.

11 14. Due to Defendants' failure to pay all wages due to Plaintiff during their employment, it
12 follows that Defendant failed to pay all wages due at the conclusion of Plaintiff's employment as
13 well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

14 15. The applicable Wage Order provides that "[a]ll working employees shall be provided with
15 suitable seats when the nature of the work reasonably permits the use of seats." It further states that
16 "[w]hen employees are not engaged in the active duties of their employment and the nature of the
17 work requires standing, an adequate number of suitable seats shall be placed in reasonable
18 proximity to the work area and employees shall be permitted to use such seats when it does not
19 interfere with the performance of their duties."

20 16. Here, although Plaintiff and the Aggrieved Employees could have performed their job duties
21 while seated, Defendants failed to provide suitable seating. Furthermore, Plaintiff and the
22 Aggrieved Employees should have been provided with seats for use while not actively performing
23 their work duties, but such seating was not provided.

24 **PAGA ALLEGATIONS**

25 17. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides
26 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
27 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
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1 action brought by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures outlined in Labor Code section 2699.3.

3 18. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action
4 under PAGA after the following requirement have been met:

5 19. The aggrieved employee has provided written notice by online filing to the LWDA and by
6 certified mail to the employer (hereinafter “Employee’s Notice”) of the specific provisions of the
7 Labor Code alleged to have been violated, including the facts and theories to support the alleged
8 violations; and

9 20. The LWDA has provided notice (hereinafter “LWDA’s Notice”) to the employer and the
10 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee’s
11 claims. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide such Notice within
12 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may
13 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition
14 to any other penalties to which the employee may be entitled.

15 21. On October 30, 2024, Plaintiff provided written notice by online filing to the LWDA and by
16 certified mail to Defendants of specific provisions of the Labor Code alleged to have been violated
17 by Defendants, including the facts and theories to support the alleged violations.

18 22. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written
19 notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks
20 PAGA Penalties on behalf of all Aggrieved Employees.

21 23. The Aggrieved Employees are defined as “All other nonexempt, hourly employees, current
22 and former, who were employed by Defendants within one year prior to October 30, 2024, through
23 final disposition of this action.”

24 **FIRST CAUSE OF ACTION**

25 **Failure to Provide Compliant Meal Periods**

26 **By Plaintiff Against All Defendants**

27 24. Plaintiff incorporates by reference the paragraphs above.

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1 25. Labor Code section 512 and the Wage Orders provide that “an employer shall not employ an
2 employee for a work period of more than five hours per day without providing the employee with a
3 meal period of not less than 30 minutes” or “for a work period of more than 10 hours per day
4 without providing the employee with a second meal period of not less than 30 minutes”.

5 26. An employer provides compliant meal breaks to its employees “if it relieves its employees
6 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
7 take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
8 1004, 1040 (2012)).

9 27. Not only must an employer affirmatively relieve its employees of all duty during their meal
10 breaks, it also must not “impede or discourage” its employees from taking compliant meal breaks.
11 (*Brinker*, supra).

12 28. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

13 29. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
14 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
15 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
16 11 Cal. 5th 858 (2021)).

17 30. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a meal
18 break was missed.

19 31. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
20 penalties, attorney fees, and costs.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Provide Compliant Rest Periods**

23 **By Plaintiff Against All Defendants**

24 32. Plaintiff incorporates by reference the paragraphs above.

25 33. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit
26 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net
27 per four hours or major fraction thereof.

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1 34. Furthermore, “[d]uring rest periods employers must relieve employees of all duties and
2 relinquish control over how employees spend their time.” (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
3 5th 257, 269 (2016)).

4 35. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

5 36. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
6 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
7 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
8 11 Cal. 5th 858 (2021)).

9 37. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a rest
10 break was missed.

11 38. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
12 penalties, attorney fees, and costs.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Pay for All Hours Worked**

15 **By Plaintiff Against All Defendants**

16 39. Plaintiff incorporates by reference the paragraphs above.

17 40. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay
18 employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than
19 40 hours in a workweek.

20 41. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

21 42. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest,
22 penalties, attorney fees, and costs.

23 **FOURTH CAUSE OF ACTION**

24 **Failure to Pay All Overtime Owed**

25 **By Plaintiff Against All Defendants**

26 43. Plaintiff incorporates by reference the paragraphs above.

27 44. Labor Code section 510 provides that “[a]ny work in excess of eight hours in one workday
28 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

45. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

46. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages, interest, penalties, attorney fees, and costs.

FIFTH CAUSE OF ACTION

Failure To Reimburse Work-Related Expenses

By Plaintiff Against All Defendants

47. Plaintiff incorporates by reference the paragraphs above.

48. Pursuant to Labor Code section 2802, an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the employee's discharge of his or her duties.

49. Defendants failed to reimburse Plaintiff for all work-related expenses as alleged herein.

50. Plaintiff is therefore entitled to reimbursement for all work-related expenses, penalties, attorney fees, and costs.

SIXTH CAUSE OF ACTION

Wage Statement Penalties

By Plaintiff Against All Defendants

51. Plaintiff incorporates by reference the paragraphs above.

52. Labor Code section 226(a) requires employers to provide itemized wage statements to its employees that identify accurate information regarding their compensation. Defendants, as a matter of policy and practice, failed in its affirmative obligation to provide accurate itemized wage statements to Plaintiff in violation of Labor Code section 226(a).

53. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate and incomplete.

54. Defendants knowingly and intentionally issued wage statements that were inaccurate and incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

1 55. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
2 costs.

3 **SEVENTH CAUSE OF ACTION**

4 **Waiting Time Penalties**

5 **By Plaintiff Against All Defendants**

6 56. Plaintiff incorporates by reference the paragraphs above.

7 57. Labor Code sections 201 and 202 require that an employer provide an employee with all
8 wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the
9 employee's resignation.

10 58. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
11 accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a
12 penalty from the due date at the same rate until paid or until an action is commenced, not to exceed
13 thirty days.

14 59. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the
15 conclusion of employment.

16 60. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees,
17 and costs.

18 **EIGHTH CAUSE OF ACTION**

19 **Violation of Unfair Competition Law**

20 **By Plaintiff Against All Defendants**

21 61. Plaintiff incorporates by reference the paragraphs above.

22 62. Defendants' conduct described herein constitutes unfair competition.

23 63. Specifically, Defendants have gained an unfair advantage over other similarly situated
24 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
25 owed.

26 64. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
27 wrongfully withheld wages.

28 65. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

1 **NINTH CAUSE OF ACTION**

2 **Private Attorneys General Act**

3 **By Plaintiff and the Aggrieved Employees Against All Defendants**

4 66. Plaintiff incorporates by reference the paragraphs above.

5 67. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
6 violation(s) of the Labor Code.

7 68. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

8 69. With respect to violations of Labor Code sections 226.7 and 558 for Defendants' failure to
9 provide Plaintiff and the Aggrieved Employees with compliant meal periods or compensation in
10 lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

11 70. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide
12 Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof,
13 the penalties in Labor Code section 2699 apply.

14 71. With respect to violations of Labor Code section 1197 for Defendants' failure to compensate
15 Plaintiff and the Aggrieved Employees for all minimum wages earned, the penalties in Labor Code
16 sections 1197.1 and 2699 apply.

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18 72. With respect to violations of Labor Code section 510 for Defendants' failure to compensate
19 Plaintiff and the Aggrieved Employees for all overtime wages earned, the penalties in Labor Code
20 sections 558, 1197.1, and 2699 apply.

21 73. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
22 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3
23 and 2699 apply.

24 74. With respect to violations of Labor Code section 203 for failure to pay all wages due to
25 Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in
26 Labor Code section 2699 apply.

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1 75. With respect to violations of Labor Code section 2802 for failure to reimburse Plaintiff and
2 the Aggrieved Employees for all work-related expenses, the penalties in Labor Code section 2699
3 apply.

4 76. With respect to violations of Labor Code section 1198 and the relevant wage order for
5 failure to provide Plaintiff and the Aggrieved Employees with suitable seating, the penalties in
6 Labor Code section 2699 apply.

7 77. Pursuant to Labor Code section 2699(k)(1), Plaintiff further seeks public injunctive relief in
8 the form of an Order enjoining Defendants from continuing to violate the California Labor Code in
9 the manner alleged herein.

10 78. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant
11 to Labor Code section 2699(g).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

14 **First Cause of Action**

- 15 1. Damages and/or penalties pursuant to Labor Code section 226.7
- 16 2. Interest
- 17 3. Attorneys' fees
- 18 4. Costs
- 19 5. Other relief the court deems proper

20 **Second Cause of Action**

- 21 1. Damages and/or penalties pursuant to Labor Code section 226.7
- 22 2. Interest
- 23 3. Attorneys' fees
- 24 4. Costs
- 25 5. Other relief the court deems proper

26 **Third Cause of Action**

- 27 1. Damages and/or penalties pursuant to Labor Code sections 558, 1194, 1197, and 1197.1
- 28 2. Liquidated damages

- 1 3. Interest
- 2 4. Attorneys' fees
- 3 5. Costs
- 4 6. Other relief the court deems proper

5 Fourth Cause of Action

- 6 1. Damages and/or penalties pursuant to Labor Code sections 510, 558, and 1194
- 7 2. Interest
- 8 3. Attorneys' fees
- 9 4. Costs
- 10 5. Other relief the court deems proper

11 Fifth Cause of Action

- 12 1. Reimbursement of all work-related expenses
- 13 2. Attorneys' fees
- 14 3. Costs
- 15 4. Other relief the court deems proper

16 Sixth Cause of Action

- 17 1. Penalties pursuant to Labor Code section 226
- 18 2. Attorneys' fees
- 19 3. Costs
- 20 4. Other relief the court deems proper

21 Seventh Cause of Action

- 22 1. Penalties pursuant to Labor Code section 203
- 23 2. Attorneys' fees
- 24 3. Costs
- 25 4. Other relief the court deems proper

26 Eighth Cause of Action

- 27 1. Restitution of all wrongfully withheld wages
- 28 2. Attorneys' fees

- 1 3. Costs
2 4. Other relief the court deems proper

3 Ninth Cause of Action

- 4 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.
5 2. Public injunctive relief in the form of an Order enjoining Defendants from continuing to
6 violate the California Labor Code in the manner alleged herein
7 3. Attorneys' fees
8 4. Costs
9 5. Other relief the court deems proper

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11 DATED: March 4, 2025

FRONTIER LAW CENTER

12 /s/ Daniel Ginzburg

DANIEL GINZBURG

13
14 Attorneys for Plaintiff
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16 individually and on behalf of all others
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