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Superior Court of California,
County of Placer

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By: Cindy P Baldock
Deputy Clerk

Nazo Koulloukian, SBN 263809
nazo@koullaw.com
KOUL LAW FIRM, APC
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Sahag Majarian, II, Esq. SBN 146621
Sahagii@aol.com
Garen Majarian, Esq. SBN 334104
garen@majarianlawgroup.com
MAJARIAN LAW GROUP, APC
18250 Ventura Blvd.
Tarzana, CA 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff,
JESSICA AGUIRRE on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

JESSICA AGUIRRE, individuals, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

NEWPORT LLC a California limited liability
company, KALESTA HEALTHCARE
GROUP, LLC, a California limited liability
company and ALMONDVISTA
HEALTHCARE, a California non-profit
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: S-CV-0054250

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

1 Plaintiff JESSICA AGUIRRE brings this PAGA representative action complaint on behalf
2 of herself, all aggrieved employees, and the State of California as a Private Attorneys General, and
3 alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff JESSICA AGUIRRE worked as an employee for Defendant NEWPORT LLC,
6 KALESTA HEALTHCARE GROUP, LLC, and ALMOND VISTA HEALTHCARE and Does 1-
7 50 (collectively “Defendant”). Defendant operates nursing homes. Plaintiff JESSICA AGUIRRE
8 worked for Defendant as a housekeeper on an hourly, non-exempt basis from June of 2021, until
9 September 13, 2024.

10 2. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
11 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former
12 hourly, nonexempt employees of Defendant within one year of serving notice on the LWDA to the
13 present are aggrieved employees.

14 3. Defendant failed to comply with California Labor Code requirements due to erroneous,
15 willful and intentional employment practices and policies. Plaintiff brings this representative
16 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
17 California, based upon the claims articulated below. Plaintiff provided notice of their claims
18 pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
19 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
20 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
21 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
22 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

23 4. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
24 worked, including overtime hours worked; (2) failing to pay all wages owed twice per month; (3)
25 failing to pay minimum wage; (4) failing to pay wages due upon termination; (5) failing to provide
26 rest breaks; (6) failing to provide compliant meal breaks; (7) failing to reimburse for required
27 business expenses; (8) failing to properly accrue and pay for unpaid vacation; (9) failing to provide
28 accurate itemized wage statements. Defendant is therefore liable for civil penalties under the Cal.

1 Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as
2 described more fully herein.

3 THE PARTIES

4 5. Plaintiff JESSICA AGUIRRE is a resident of the State of California and worked as a
5 housekeeper on an hourly, non-exempt basis from June of 2021, until September 13, 2024.

6 6. Defendant NEWPORT LLC is a California limited liability company authorized to do
7 business and doing business in California with the capacity to sue and to be sued, and doing
8 business, in the county of Placer, State of California.

9 7. Defendant KALESTA HEALTHCARE GROUP, LLC, is a California limited liability
10 company authorized to do business and doing business in California with the capacity to sue and
11 to be sued, and doing business, in the county of Placer, State of California.

12 8. Defendant ALMOND VISTA HEALTHCARE, is a California non-profit corporation
13 authorized to do business and doing business in California with the capacity to sue and to be sued,
14 and doing business, in the county of Placer, State of California.

15 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
16 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
17 informed and believes and thereon alleges that said Defendant is legally responsible for the
18 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
19 will amend this complaint when their true names and capabilities are ascertained.

20 10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
21 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
22 of the representative class, and exercised control over their wages, hours, and working conditions.
23 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
24 pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
25 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
26 to the other Defendants.
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12. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

PAGA REPRESENTATIVE ACTION ALLEGATIONS

14. During the relevant time-period, Defendant committed various violations of the California Labor Code as alleged below in more detail. Defendant enforces multiple policies that violate state law, which are intended to increase profits to the detriment of aggrieved employees.

16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing to the present, Defendant engaged in unlawful employment practices that resulted in violations of numerous Labor Code sections, as set forth more fully below.

18. Defendant, and each of them, has committed the following violations of the California Labor Code:

1 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

2 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Wage Order 5)

3 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 20. The Wage Orders define “hours worked” as “the time during which an employee is
6 subject to the control of an employer, and including all the time the employee is suffered or
7 permitted to work, whether or not required to do so.” Defendant has been engaged in many
8 unlawful employment practices which resulted in underpayment for hours worked each pay period,
9 including overtime hours worked, as more fully set forth below. Defendant has also failed to pay
10 the required minimum wage for all hours worked and has failed to pay all wages owed twice per
11 month.

12 21. Plaintiff and aggrieved employees have been employed under conditions prohibited by
13 the wage order, and thus Defendant has also violated §§1198 and 1199. Defendant is liable for
14 civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

15 22. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently worked
16 off the clock and were routinely subjected to periods wherein they were under the Defendant’s
17 control but not compensated for their time. For example, Plaintiff was frequently required to
18 complete a pre-shift set-up before clocking into work.

19 **Failure to Pay All Wages Owed Twice Per Month**

20 (Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

21 23. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 24. Defendant was required to pay Plaintiff and aggrieved employees all wages earned
24 twice during each calendar month pursuant to Labor Code §204(a).

25 25. Defendant failed to pay all wages earned to employees as a result of the unlawful
26 employment policies and practices discussed herein. As a result of these practices, employees were
27 underpaid for hours worked, including overtime and penalty wages, and this underpayment
28 resulted in a failure to pay all wages owed twice per month.

1 26. Due to these failures, Defendant is liable under Labor Code §204, 210 and 2698 *et seq.*
2 for failure to pay wages as required by law.

3 **Failure to Pay Minimum Wage**

4 (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

5 27. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
6 incorporate said paragraphs herein by reference.

7 28. Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer
8 to suffer or permit a California employee to work without paying wages at the proper minimum
9 wage for all time worked as required by the applicable IWC Wage Order.

10 29. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
11 result of Defendant's practices described above. Based on Defendant's unlawful conduct described
12 herein, and because Plaintiff and the aggrieved employees were paid at or near minimum wage,
13 employer's failure to pay for all hours worked, including overtime, resulted in a payment of less
14 than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and
15 the Wage Orders. Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699
16 *et seq.*

17 **Failure to Pay Wages Due Upon Termination**

18 (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

19 30. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 31. An employee who is discharged must be paid all of his or her wages, including accrued
22 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
23 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
24 Plaintiff at the time employment terminated.

25 32. Plaintiff, for example, was not paid for the work she did off the clock nor for her
26 business-related expenses. Plaintiff is also still owed unpaid premium pay for noncompliant meal
27 and rest periods.
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1 33. Defendant willfully failed to pay employees who are no longer employed by it all
2 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
3 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
4 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
5 Cal. Lab. Code § 2698 *et. Seq.*

6 **Failure to Provide Rest Breaks**

7 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

8 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
9 incorporate said paragraphs herein by reference.

10 35. Defendant failed to maintain a compliant rest period policy and practice that provides
11 its employees with off-duty rest periods as required by California law. Plaintiff alleges that
12 employees frequently missed rest periods as a result of Defendant's staffing and business practices,
13 and that rest breaks were not scheduled into daily shifts.

14 36. Plaintiff reports that she and her co-workers often received late, short, or interrupted
15 rest periods due to the press of work. Plaintiff further explains that she and her coworkers
16 sometimes missed their rest breaks altogether due to the press of work.

17 37. Rest breaks were consistently under 10 minutes because employees were required to
18 return back to their workstations within 10 minutes. However, the break facility was located 5
19 minutes from the work areas, significantly cutting into the employees' required 10-minute breaks.

20 38. Rest periods were either less than ten minutes, not provided, interrupted or late, "on
21 duty," or not scheduled before and after a meal period for shifts greater than six hours, as
22 prescribed by California law because Defendant: (1) did not account for all hours worked that were
23 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
24 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
25 inform and train employees about when, where and how to take timely and uninterrupted ten-
26 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
27 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
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1 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
2 break policy.

3 39. The rest period requirement obligates employers to permit and authorize employees to
4 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
5 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
6 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's
7 regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted
8 rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC
9 Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance
10 with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of
11 pay at the employee's regular rate of compensation for each work day that the rest period is not
12 provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable
13 rest area. (Id. at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein
14 the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a
15 rest area and cannot include time it takes to get to and from the rest area). The employer must show
16 that it clearly articulates the right to a net ten minutes, which means it must clearly communicate
17 what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest
18 area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v.*
19 *Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to
20 clearly communicate the authorization and permission [to take rest periods] to their employees.").

21 40. Defendant did not authorize or permit all of its hourly employees to take at least a ten-
22 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
23 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. When breaks
24 were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated
25 the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations,
26 Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

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1 Defendant unlawfully shaved and/or rounded clock in and clock out times for meal periods.
2 Employees were not paid a premium payment, paid as an hour's wage when meal periods were
3 not given to them in compliance with California law.

4 **Failure to Reimburse For Required Business Expenses**

5 (Cal. Labor Code §1198, 2802, 2699 *et seq.*)

6 46. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 47. Labor Code §2802 requires employers to indemnify employees for necessary
9 expenditures or losses incurred by employees in direct consequence of the discharge of duties.
10 Accordingly, Defendant is liable for civil penalties under PAGA §2699 *et seq.*

11 48. Plaintiff and aggrieved employees used their personal cell phone for work purposes
12 such as communicating through a work group chat, although Defendant did not reimburse them in
13 any way for the expense of their personal cell phone use as required by the Labor Code.

14 **Failure to Properly Accrue and Pay for Unpaid Vacation**

15 (Cal. Lab. Code §227.3 and 2698 *et seq.*)

16 49. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
17 incorporate said paragraphs herein by reference.

18 50. Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer
19 policy provides for paid vacations, and an employee is terminated without having taken off [her]
20 vested vacation time, all vested vacation shall be paid to him as wages at his final rate.”

21 51. In this case, Defendant failed to pay all accrued vacation wages to Plaintiff and
22 aggrieved employees upon termination. Plaintiff alleges on information and belief that she is owed
23 52 hours of unpaid accrued vacation. Defendant is liable for civil penalties pursuant to Cal. Labor
24 Code §2698 *et. seq.*

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1 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
2 **Requirements**

3 (Cal. Labor Code §§ 226, 246, 1174, 1174.5, 2699 *et seq*)

4 52. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

6 53. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
7 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
8 and keep accurate records as required by §1174(d).

9 54. §226 (a) requires:

10 A. An employer, semimonthly or at the time of each payment of wages,
11 shall furnish to his or her employee, either as a detachable part of the check,
12 draft, or voucher paying the employee's wages, or separately if wages are paid
13 by personal check or cash, an accurate itemized statement in writing showing
14 (1) gross wages earned, (2) total hours worked by the employee, except as
15 provided in subdivision (j), (3) the number of piece-rate units earned and any
16 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
17 deductions, provided that all deductions made on written orders of the employee
18 may be aggregated and shown as one item, (5) net wages earned, (6) the
19 inclusive dates of the period for which the employee is paid, (7) the name of the
20 employee and only the last four digits of his or her social security number or an
21 employee identification number other than a social security number, (8) the
22 name and address of the legal entity that is the employer and, if the employer is
23 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
24 and address of the legal entity that secured the services of the employer, and (9)
25 all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate by the employee...

27 55. Such failures caused injury to Plaintiff and others, by, among other things, impeding
28 them from knowing the total hours worked and the amount of wages to which they are and were

entitled. Defendant knowingly and intentionally failed to list all the items described above. Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

56. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment, including invalid meal period waivers resulting from a noncompliant meal period policy and/or practice.

FIRST CAUSE OF ACTION

Against Defendant for Violation of the Private Attorneys General Act (“PAGA”) (California Labor Code §2698 *et seq.*)

57. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

58. Plaintiff is an “aggrieved employee” under PAGA, as they were employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

59. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

60. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

- a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Wage Order 5);
- b. Failure to Pay All Wages Owed Twice Per Month (Cal. Labor Code §§204, 210, and 2698 *et seq.*);
- c. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*);

- 1 d. Failure to Pay Wages Due Upon Termination (Cal. Labor Code §§201, 202, 203,
2 256 and 2698 *et seq.*);
- 3 e. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
4 2698 *et seq.*);
- 5 f. Failure to Provide Compliant Meal Breaks (Cal. Labor Code §§226, 226.7, 512,
6 558, 1198, 2698 *et seq.*);
- 7 g. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §1198,
8 2802, 2699 *et seq.*);
- 9 h. Failure to Properly Accrue and Pay for Unpaid Vacation (Cal. Lab. Code §227.3
10 and 2698 *et seq.*)
- 11 i. Failure to Provide Accurate Itemized Wage Statements & Violation of Record
12 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

13 61. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
14 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
15 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
16 employee for each subsequent violation of Labor Code §226(a).

17 62. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
18 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
19 for each underpaid employee for each pay period for which the employee was underpaid, and one
20 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
21 for which the employee was underpaid.

22 63. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
23 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
24 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
25 a civil penalty is not specifically provided.

26 64. Plaintiff and the other current and former employees of Defendant is aggrieved
27 employees. They were or are employed by Defendant, and each of them, and the violations alleged
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herein were committed against them. Plaintiff brings this action on behalf of herself and all other current and former aggrieved employees.

65. At the time of each violation, Defendant employed one or more employees.

66. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

67. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency ("LWDA") and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;

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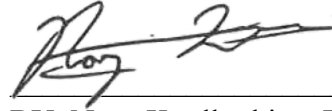
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- 1 4. Pre-judgement and post-judgement interest as provided by law; and
2 5. Such other and further relief that the Court may deem just and proper.
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4 DATED: December 17, 2024

KOUL LAW FIRM, APC

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7 BY: Nazo Koulloukian, Esq.
8 Attorneys for Plaintiff JESSICA AGUIRRE, and all
9 aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

October 10, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Newport LLC
559 Menlo Drive, Suite 200
Rocklin, CA 95765

Kalesta Healthcare Group, LLC
559 Menlo Drive, Suite 200
Rocklin, CA 95765

Almond Vista Healthcare
2030 Evergreen Avenue
Modesto, CA 95350

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Jessica Aguirre
Employer: Newport LLC, Kalesta Healthcare Group, LLC, and AlmondVista
Healthcare

Dear Sir or Madam:

Claimant Jessica Aguirre has retained Nazo Koulloukian, Esq. of the Koul Law Firm, APC, to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, Newport LLC, Kalesta Healthcare Group, LLC, and Almond Vista Healthcare (hereafter “Employer”). Claimant worked for Employer as a housekeeper on an hourly, non-exempt basis from June of 2021, until September 13, 2024.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Wage Order 5)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked and has failed to pay all wages owed twice per month.

Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. For example, Claimant was frequently required to complete a pre-shift set-up before clocking into work.

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

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 proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practices described above. Based on Employer’s unlawful conduct described

herein, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Claimant, for example, was not paid for the work she did off the clock nor for her business-related expenses. Claimant is also still owed unpaid premium pay for noncompliant meal and rest periods.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

Employer failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that employees frequently missed rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts.

Claimant reports that she and her co-workers often received late, short, or interrupted rest periods due to the press of work. Claimant further explains that she and her coworkers sometimes missed their rest breaks altogether due to the press of work.

Rest breaks were consistently under 10 minutes because employees were required to return back to their workstations within 10 minutes. However, the break facility was located 5 minutes from the work areas, significantly cutting into the employees' required 10-minute breaks.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest

breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("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 the employee's regular rate of compensation for each work day that the rest period is not provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.").

Employer did not authorize or permit all of its hourly employees to take at least a ten-minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Permit Compliant Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare

Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer failed to pay all penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing to meet the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Although the meal period was the only break in the shift of the Claimant and aggrieved employees received, their meal breaks were often cut short or interrupted.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because Employer unlawfully shaved and/or rounded clock in and clock out times for meal periods. Employees were not paid a premium payment, paid as an hour’s wage when meal periods were not given to them in compliance with California law.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Claimant and aggrieved employees used their personal cell phone for work purposes such as communicating through a work group chat, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code.

Failure to Properly Accrue and Pay for Unpaid Vacation

(Cal. Lab. Code §227.3 and 2698 *et seq.*)

Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off [her]

vested vacation time, all vested vacation shall be paid to him as wages at his final rate.” In this case, Employer failed to pay all accrued vacation wages to Claimant and aggrieved employees upon termination. Specifically, Claimant states that she is owed 52 hours of unpaid accrued vacation. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 246, 1174, 1174.5, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to list all the items described above. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of

employment, including invalid meal period waivers resulting from a noncompliant meal period policy and/or practice.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a horizontal line extending from the end of the signature.

Nazo Koulloukian, Esq.
Attorneys for Claimant