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Per local Rule, This case is assigned to
Judge Devine, John P, for all purposes.

Attorneys for Plaintiff

SUMMONS ISSUED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

LUIS TAPIA, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

ADVANCED HOME HEALTH, INC., a
California Corporation; ADVANCED HOME
HEALTH AND HOSPICE, INC., a California
Corporation; ADVANCED HOME HEALTH
NORTHBAY, INC., a California Corporation;
ADVANCED HOME HEALTH SAN DIEGO,
INC., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. C24-02593

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 246, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 11070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s).

1 Plaintiff Luis Tapia (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against defendants Advanced Home Health, Inc.,
8 Advanced Home Health and Hospice, Inc., Advanced Home Health Northbay, Inc., and
9 Advanced Home Health San Diego, Inc. (referred to as “DEFENDANT”) seeking only to
10 recover PAGA civil penalties on behalf of all current and former aggrieved employees that
11 worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than**
12 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
13 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
14 and/or special damages for those violations, but simply the civil penalties permitted by
15 California Labor Code § 2699.

16 2. California has enacted the PAGA which permits PLAINTIFF to bring an action
17 on behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and
18 sole nature of this action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
20 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
21 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
22 complaint should be construed as attempting to obtain any relief that would not be available in
23 a PAGA-only action.

24 4. PLAINTIFF is not suing in his individual capacity; he is proceeding
25 herein solely under the PAGA, on behalf of the State of California for all aggrieved employees,
26 including himself and other aggrieved employees. Nothing in this complaint should be
27 construed as PLAINTIFF suing in his individual capacity.

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THE PARTIES

5. Defendant Advanced Home Health, Inc. is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

6. Defendant Advanced Home Health and Hospice, Inc. is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

7. Defendant Advanced Home Health Northbay, Inc. is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

8. Defendant Advanced Home Health San Diego, Inc. is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

9. PLAINTIFF alleges there has existed a unity of interest and ownership between Defendants Advanced Home Health, Inc., Advanced Home Health and Hospice, Inc., Advanced Home Health Northbay, Inc., and Advanced Home Health San Diego, Inc. such that any individuality and separateness between the entities has ceased and all Defendants are referred to herein as “DEFENDANT.”

10. PLAINTIFF was employed by DEFENDANT in California from 2015 to January of 2024 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

11. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. and/or Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. in California, including any employees

1 staffed with Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc.
2 and/or Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc.
3 by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
4 during the time period of February 15, 2023 until a date as determined by the Court (the "PAGA
5 PERIOD").

6
7 12. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES
8 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
9 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
10 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
11 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
12 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
13 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the
14 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
15 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

25 14. The agents, servants and/or employees of the Defendants and each of them
26 acting on behalf of the Defendants acted within the course and scope of his, her or its
27 authority as the agent, servant and/or employee of the Defendants, and personally
28 participated in the conduct alleged herein on behalf of the Defendants with respect to the

1 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
2 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
3 all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the
4 conduct of the Defendants' agents, servants and/or employees.

5 **THE CONDUCT**

6 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
7 was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time
8 worked, meaning the time during which an employee is subject to the control of an
9 employer, including all the time the employee is suffered or permitted to work.
10 DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without
11 paying them for all the time they are under DEFENDANT's control. Among other things,
12 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
13 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
14 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
15 break. DEFENDANT, as a matter of established company policy and procedure,
16 administers a uniform practice of rounding the actual time worked and recorded by
17 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
18 so that during the course of their employment, PLAINTIFF and the AGGRIEVED
19 EMPLOYEES are paid less than they would have been paid had they been paid for actual
20 recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the
21 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off
22 the clock in that DEFENDANT, as a condition of employment, required these employees to
23 submit to mandatory temperature checks and symptom questionnaires for COVID-19
24 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a
25 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
26 wage compensation, and off-duty meal breaks by working without their time being correctly
27 recorded and without compensation at the applicable rates. DEFENDANT's policy and
28

1 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is
2 evidenced by DEFENDANT's business records.

3 16. State law provides that employees must be paid overtime and meal and rest
4 break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
5 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
6 tied to specific elements of an employee's performance.

7 17. The second component of PLAINTIFF's and the AGGRIEVED
8 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that
9 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
10 performance for DEFENDANT. The non-discretionary incentive program provided all
11 employees paid on an hourly basis with incentive compensation when the employees met the
12 various performance goals set by DEFENDANT. However, when calculating the regular
13 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
14 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
15 compensation as part of the employees' "regular rate of pay" for purposes of calculating
16 overtime pay and meal and rest break premium pay. Management and supervisors described
17 the incentive program to potential and new employees as part of the compensation package.
18 As a matter of law, the incentive compensation received by PLAINTIFF and the
19 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to
20 do so has resulted in a underpayment of overtime compensation and meal and rest break
21 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

22 18. As a result of their rigorous work schedules, PLAINTIFF and the
23 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
24 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
25 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
26 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
27 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
28 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in

1 which these employees were required by DEFENDANT to work ten (10) hours of work.
2 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
3 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
4 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
5 and in accordance with DEFENDANT's corporate policy and practice.

6 19. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
7 EMPLOYEES were also required from time to time to work in excess of four (4) hours
8 without being provided ten (10) minute rest periods. Further, these employees were denied
9 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
10 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
11 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
12 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
13 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
14 also not provided with one hour wages in lieu thereof. Additionally, the applicable
15 California Wage Order requires employers to provide employees with off-duty rest periods,
16 which the California Supreme Court defined as time during which an employee is relieved
17 from all work related duties and free from employer control. In so doing, the Court held that
18 the requirement under California law that employers authorize and permit all employees to
19 take rest period means that employers must relieve employees of all duties and relinquish
20 control over how employees spend their time which includes control over the locations
21 where employees may take their rest period. Employers cannot impose controls that prohibit
22 an employee from taking a brief walk - five minutes out, five minutes back. Here,
23 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
24 unconstrained walks and is unlawful based on DEFENDANT's rule which states
25 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
26 their rest period.

27 20. During the PAGA PERIOD, DEFENDANT failed to accurately record and
28 pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these

1 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
2 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
3 all time worked, meaning the time during which an employee was subject to the control of
4 an employer, including all the time the employee was permitted or suffered to permit this
5 work. DEFENDANT required these employees to work off the clock without paying them
6 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
7 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
8 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
9 EMPLOYEES forfeited time worked by working without their time being accurately
10 recorded and without compensation at the applicable minimum wage and overtime wage
11 rates. To the extent that the time worked off the clock does not qualify for overtime
12 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-
13 the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

14 21. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
15 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
16 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
17 provides that every employer shall furnish each of his or her employees with an accurate
18 itemized wage statement in writing showing, among other things, gross wages earned and all
19 applicable hourly rates in effect during the pay period and the corresponding amount of time
20 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
21 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
22 during the pay period and the total hours worked, and the applicable pay period in which the
23 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
24 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
25 identify such information. More specifically, the wage statements failed to identify the
26 accurate total hours worked each pay period. When the hours shown on the wage statements
27 were added up, they did not equal the actual total hours worked during the pay period in
28 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this

1 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
2 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
3 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
4 statements which violated Cal. Lab. Code § 226.

5 22. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
6 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
7 the wages are paid not more than seven (7) calendar days following the close of the payroll
8 period. Cal. Lab. Code § 210 provides:

9 in [I]n addition to, and entirely independent and apart from, any other penalty provided
10 this article, every person who fails to pay the wages of each employee as provided in
11 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
12 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

13 23. DEFENDANT from time to time failed to pay PLAINTIFF and the
14 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
15 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Hourly” regular
16 wage payments.

17 24. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
18 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
19 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
20 employees earn non-discretionary remuneration, including, but not limited to, incentives,
21 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
22 DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at
23 their base rates of pay.

24 25. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
25 employees be calculated by dividing the employee’s total wages, not including overtime
26 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
27 days of employment.

1 26. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
2 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
3 earned non-discretionary incentive wages which increased their regular rate of pay.
4 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
5 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
6 required under Cal. Lab. Code Section 246.

7 27. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
8 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
9 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
10 believes and based thereon alleges that such failure to pay sick pay at regular rate was
11 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
12 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

13 28. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
14 to collect or receive from an employee any part of wages theretofore paid by said employer
15 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
16 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
17 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
18 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
19 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
20 pay period and upon termination.

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

1 obedience to the directions of the employer, even though unlawful, unless the employee, at
2 the time of obeying the directions, believed them to be unlawful."

3 30. In the course of their employment PLAINTIFF and the AGGRIEVED
4 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
5 personal cellular phones and home offices as a result of and in furtherance of their job duties
6 as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT
7 for the cost associated with the use of their personal cellular phones and home offices for
8 DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES
9 were required by DEFENDANT to use their personal cellular phones and home offices. As
10 a result, in the course of their employment with DEFENDANT, PLAINTIFF and the
11 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
12 were not limited to, costs related to the use of their personal cellular phones and home
13 offices all on behalf of and for the benefit of DEFENDANT.

14 31. In violation of the applicable sections of the California Labor Code and the
15 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
16 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
17 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES suitable seating when the nature of these employees' work reasonably
19 permitted sitting.

20 32. DEFENDANT knew or should have known that PLAINTIFF and other
21 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
22 when it did not interfere with the performance of their duties, and that DEFENDANT did
23 not provide suitable seating and/or did not allow them to sit when it did not interfere with
24 the performance of their duties.

25 33. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
26 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
27 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
28 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.

1 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
2 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
3 California Labor Code and regulations promulgated thereunder as herein alleged.

4 34. The employment of PLAINTIFF and other AGGRIEVED EMPLOYEES has
5 terminated and DEFENDANT has not tendered payment of all wages owed as required by
6 law. Additionally, at all times during the term of PLAINTIFF's employment with
7 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued
8 vested vacation and holiday time on the date of their termination pursuant to
9 DEFENDANT's uniform vacation policies and applicable California law. The amount of
10 vacation pay PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and
11 accumulated is evidenced by DEFENDANT's business records. Additionally,
12 DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFF and other
13 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay and
14 more specifically the final rate of pay that included all non-discretionary incentive
15 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT
16 underpaid vacation wages to PLAINTIFF and other AGGRIEVED EMPLOYEES at their
17 base rates of pay, instead of including all of the PLAINTIFF's and other AGGRIEVED
18 EMPLOYEES' non-discretionary incentive compensation into the vacation wage payment
19 calculations. DEFENDANT failed to specify in DEFENDANT's written vacation policy the
20 rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid vacation
21 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
22 practice, policy and procedure to deny paying the PLAINTIFF and other AGGRIEVED
23 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay
24 PLAINTIFF and other AGGRIEVED EMPLOYEES all vested vacation time as wages due
25 upon employment termination, in violation of the California Labor Code, Sections 201, 202,
26 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFF
27 and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of
28 the AGGRIEVED EMPLOYEES' non-discretionary compensation into the waiting time

1 penalty calculations. This failure by DEFENDANT is believed to be the result of
2 DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for earned,
3 accrued and vested vacation and holiday time, as well as the corresponding waiting time
4 penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive
5 practice to the detriment of PLAINTIFF and other AGGRIEVED EMPLOYEES.
6 DEFENDANT's uniform practice and policy of failing to pay PLAINTIFF and other
7 AGGRIEVED EMPLOYEES for all vested vacation and holiday time accumulated at
8 employment termination violated and continues to violate Section 227.3 of the California
9 Labor Code.

10 35. All of the conduct and violations alleged herein occurred during the PAGA
11 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
12 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
13 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
14 2018 AJDAR 12157 (Certified for Publication 12/19/18).

15 **JURISDICTION AND VENUE**

16 36. This Court has jurisdiction over this Action pursuant to California Code of
17 Civil Procedure, Section 410.10.

18 37. Venue is proper in this Court pursuant to California Code of Civil Procedure,
19 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
20 employs AGGRIEVED EMPLOYEES across California, including in this County, and
21 committed the wrongful conduct herein alleged in this County against AGGRIEVED
22 EMPLOYEES.

23 **FIRST CAUSE OF ACTION**

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

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

26 **(By PLAINTIFF and Against All Defendants)**

27 38. PLAINTIFF realleges and incorporates by this reference, as though fully set
28

1 forth herein, the prior paragraphs of this Complaint.

2 39. PAGA is a mechanism by which the State of California itself can enforce state
3 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
4 the state's labor law enforcement agencies. An action to recover civil penalties under
5 PAGA is fundamentally a law enforcement action designed to protect the public and not to
6 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
7 but to create a means of "deputizing" citizens as private attorneys general to enforce the
8 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
9 public interest to allow aggrieved employees, acting as private attorneys general to recover
10 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
11 claims cannot be subject to arbitration.

12 40. PLAINTIFF, and such persons that may be added from time to time who
13 satisfy the requirements and exhaust the administrative procedures under the Private
14 Attorney General Act, brings this Representative Action on behalf of the State of California
15 with respect to himself and all individuals who are or previously were employed by
16 Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. and/or
17 Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. in
18 California, including any employees staffed with Advanced Home Health, Inc. and/or
19 Advanced Home Health and Hospice, Inc. and/or Advanced Home Health Northbay, Inc.
20 and/or Advanced Home Health San Diego, Inc. by a third party, and classified as non-
21 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of February 15,
22 2023 until a date as determined by the Court (the "PAGA PERIOD").

23 41. On February 15, 2024, PLAINTIFF gave written notice by electronic mail to
24 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
25 employer of the specific provisions of this code alleged to have been violated as required by
26 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
27 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
28 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to

1 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
2 pursuant to Section 2699 as the proxy of the State of California with respect to all
3 AGGRIEVED EMPLOYEES as herein defined.

4 42. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
6 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
7 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
8 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
9 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
10 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
11 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2),
12 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
13 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure
14 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
15 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
16 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
17 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
18 and the AGGRIEVED EMPLOYEES.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
21 severally, as follows:

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

24 A) Recovery of civil penalties as prescribed by the Labor Code Private
25 Attorneys General Act of 2004; and,
26

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 B) An award of attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code §2699.

3 Dated: September 26, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
4 LLP

5
6 By: /s/ Nicholas De Blouw
7 _____
8 Norman B. Blumenthal
9 Kyle R. Nordrehaug
10 Nicholas J. De Blouw
11 *Attorneys for Plaintiff*

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

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Fax: (858) 551-1232

**WRITERS E-MAIL:
Nick@bamlawca.com**

**WRITERS EXT:
1004**

**February 15, 2024
CA3222**

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

**Labor and Workforce Development Agency
Online Filing**

**Advanced Home Health, Inc.
Certified Mail ##9589071052701316528780
CSC - Lawyers Incorporating Service
Becky DeGeorge
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833**

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), Brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. in California, including any employees staffed with Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. by a third party, and classified as non-exempt employees during the time period of February 15, 2023 until a date as determined by the Court. Our offices represent Plaintiff Luis Tapia (“Plaintiff”) and other Aggrieved Employees in a lawsuit Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. (“Defendant”). Plaintiff was employed with Defendant from 2015 to January of 2024 and was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,”

Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and the Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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WRITERS EXT:

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February 15, 2024

CA3222

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Advanced Home Health and Hospice, Inc.
Certified Mail #9589071052701316528773
Kristi Halva
4362 Auburn Blvd., Suite 100
Sacramento, CA 95841

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), Brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. in California, including any employees staffed with Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. by a third party, and classified as non-exempt employees during the time period of February 15, 2023 until a date as determined by the Court. Our offices represent Plaintiff Luis Tapia (“Plaintiff”) and other Aggrieved Employees in a lawsuit Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. (“Defendant”). Plaintiff was employed with Defendant from 2015 to January of 2024 and was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and

Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and the Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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**February 15, 2024
CA3222**

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Online Filing**

**Advanced Home Health Northbay, Inc.
Certified Mail #9589071052701316528797
CSC - Lawyers Incorporating Service
Becky DeGeorge
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833**

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), Brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. in California, including any employees staffed with Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. by a third party, and classified as non-exempt employees during the time period of February 15, 2023 until a date as determined by the Court. Our offices represent Plaintiff Luis Tapia (“Plaintiff”) and other Aggrieved Employees in a lawsuit Advanced Home Health Northbay, Inc. and/or Advanced Home Health San Diego, Inc. and/or Advanced Home Health, Inc. and/or Advanced Home Health and Hospice, Inc. (“Defendant”). Plaintiff was employed with Defendant from 2015 to January of 2024 and was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,”

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Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.