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17 DENISHA JOHNSON, on behalf of herself,
18 all putative class members, all aggrieved employees,
19 and the State of California as a Private Attorneys General

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF LOS ANGELES**

22 DENISHA JOHNSON, an individual, on
23 behalf of herself and all others similarly
24 situated, all aggrieved employees, and the
25 State of California as a Private Attorneys
26 General,

27 Plaintiffs,

28 vs.

29 ROUTE 66 POST ACUTE LLC, a
30 California Limited Liability Company, and
31 DOES 1-50, inclusive,

32 Defendants.

Case No.: 20STCV30890

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **FAILURE TO PROVIDE REST PERIODS**
2. **FAILURE TO PROVIDE MEAL PERIODS**
3. **FAILURE TO TIMELY PAY ALL WAGES OWED**
4. **FAILURE TO FURNISH AND MAINTAIN ACCURATE PAYROLL RECORDS**
5. **UNLAWFUL BUSINESS PRACTICES – BUS. & PROF. CODE §17200**
6. **PRIVATE ATTORNEYS GENERAL ACT PENALTIES §2698 et seq.**

JURY TRIAL DEMANDED

4815-0759-3686.1

1 Plaintiff DENISHA JOHNSON, individually, and on behalf of herself and all
2 others similarly situated, all aggrieved employees, and as a Private Attorney General for
3 the State of California (collectively “Plaintiffs”), alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiff brings this wage and hour class and PAGA representative action
6 complaint on behalf of herself, and all others similarly situated against ROUTE 66 POST
7 ACUTE LLC, and DOES 1-50, inclusive, (hereafter “Defendant”). In this Complaint,
8 Plaintiff alleges that Defendants failed to provide meal and rest breaks, failed to pay all
9 wages owed, failed to provide accurate payroll records, are liable for waiting time
10 penalties, and engaged in unfair competition. Accordingly, Plaintiff now brings this first
11 amended class and representative action complaint to recover unpaid wages and related
12 relief on behalf of herself, all others similarly situated.

13 2. Plaintiff has also filed this as a class action, under Code of Civil Procedure section
14 382, seeking damages and penalties on behalf of herself and all other persons who are or
15 have been employed by Defendants from four years prior to the initiation of this action to
16 the present. Pursuant to the class and representative action procedures provided for under
17 California law, Plaintiff, on behalf of themselves and proposed Class Members (also
18 referred to as “Class”), and aggrieved employees, also seeks injunctive relief and restitution
19 of all benefits Defendants have received from their unlawful actions as alleged herein.
20 Plaintiff has provided notice of these claims pursuant to §2698 et. seq., to the Labor and
21 Workforce and Development Agency (“LWDA”) and now brings this First Amended
22 Complaint, including claims for civil penalties under the Private Attorneys General Act
23 (“PAGA”), Labor Code §2698 et seq. Attorney General Act (“PAGA”), Labor Code §2698
24 et seq.

25 3. The “Class Period” is designated as from June 8, 2019 to the date of final
26 resolution of this action.

27 4. The “PAGA Period” is defined herein as from June 8, 2019 to the date of final
28 resolution of this action.

1 10. Plaintiff is informed and believes and thereon alleges that each Defendant,
2 directly or indirectly, or through agents or other persons, employed Plaintiff and other
3 aggrieved employees of the representative class, and exercised control over their wages,
4 hours, and working conditions. Plaintiff is informed and believes and thereon allege that
5 each Defendant acted in all respects pertinent to this action as the agent of the other
6 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
7 hereto, and the acts of each Defendant is legally attributable to the other Defendants.
8

9 **JURISDICTION AND VENUE**

10 11. Venue is proper in this judicial district because Defendants conducts business
11 in this county and Defendants have legal obligations to Plaintiff and many of the class
12 members in this case that arose in this county.

13 12. The monetary damages, restitution and statutory penalties sought by Plaintiff
14 exceed the minimal jurisdictional limits of the Superior Court and will be established
15 according to proof at trial. Based on information, investigation and analysis, Plaintiff
16 alleges that the amount in controversy, including claims for monetary damages, penalties
17 and attorney's fees is more than twenty-five thousand dollars (\$25,000).

18 13. The California Superior Court has jurisdiction in this matter because Plaintiffs
19 are residents of California and Defendants are incorporated in and/or qualified to do
20 business in California and regularly conduct business in California. Further, there is no
21 federal question at issue as the claims herein are based solely on California law.

22 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

23 14. During the Class Period and PAGA Period, Defendants committed various
24 violations of the California Labor Code, the UCL and the applicable IWC Wage Order, as
25 alleged below in more detail. Defendants enforces multiple policies that violate state law
26 which are intended to increase its own profits to the detriment of its employees.
27
28

1 15. Defendants ROUTE 66 POST ACUTE LLC is a skilled nursing facility.
2 Defendants employed, upon information and belief, more than 100 current and former non-
3 exempt employees (hereafter “Class Members” or “Class”) during the Class Period.

4 16. Defendants failed to provide rest breaks, uninterrupted meal breaks and second
5 meal breaks; to pay all wages owed, including overtime wages, for work performed and
6 due; and, provide timely, accurate wage statements and maintain required payroll records.
7 These practices also constitute unlawful and unfair business practices. These policies and
8 practices have deprived Plaintiff and Class Members, and Aggrieved Employees of timely
9 payment for all hours worked, and further damages, as set forth below, and render
10 Defendants liable for damages, including penalties under PAGA.

11 17. Failure to Provide Rest Breaks: Defendants have failed to maintain a complaint
12 rest period policy and practice that provides its employees with off-duty rest periods as
13 required by California law. Defendants are required to authorize or permit all of its hourly
14 employees to take at least a ten-minute rest period in which they were relieved of all duties,
15 for every four (4) hours of work, or major fraction thereof, as required by Cal. Lab. Code
16 §§226.7, 512 and Wage Order 1-2001 12(A).

17 18. Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks:
18 Defendants failed to permit Plaintiff and others to take timely, off-duty meal breaks of “not
19 less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
20 §§226.7 and 512. As a derivative claim, Plaintiff and others allege that pay statements were
21 inaccurate, failing to include required meal period penalties, thus failing the requirements
22 of Labor Code §226(a). As a result of these violations, Defendants are liable for civil
23 penalties pursuant to Cal. Labor Code §2898 *et seq.*

24 19. Failure to Timely Pay All Wages Owed: Defendants knowingly and willfully
25 failed to pay Plaintiff and aggrieved employees all wages due and owing upon separation
26 of employment, including overtime wages. Additionally, by furnishing Plaintiff and other
27 separated aggrieved employees with a final check that failed to include all meal and rest
28 period penalties owed, Defendants violated Labor Code §§201 and/or 202.

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1 A. Failure to Pay All Wages Owed Twice Per Month. Defendants
2 were required to pay Plaintiff and employees all wages, which
3 includes wages, earned twice during each calendar month pursuant
4 to Labor Code §204(a). Defendants failed to pay all wages earned
5 to employees as a result of the unlawful employment policies and
6 practices discussed herein, and this underpayment resulted in a
7 failure to pay all wages owed twice per month.

8 20. Failure to Provide Accurate Itemized Wage Statements: Defendants knowingly
9 and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff
10 and the aggrieved employees, and maintain accurate records, in accordance with Labor
11 Code §§226 and 1174. Wage statements issued by Defendants fail to accurately reflect
12 actual gross wages earned, including overtime and meal/rest premiums. Defendants
13 knowingly and intentionally failed to permit or provide compliant meal or rest periods,
14 knowingly failed to pay premiums for missed meal and rest periods, and knowingly failed
15 to report required premiums on wage statements and in employee records. Defendants are
16 liable for civil penalties pursuant to Labor Code §2699 *et seq.*

17 21. Unlawful business practices: Based Upon the above allegations, Defendants
18 engaged in unfair competition.

19 **CALIFORNIA CLASS ACTION ALLEGATIONS**

20 22. Plaintiff brings this action on behalf of herself, and all other persons similarly
21 situated, to recover from Defendants for failure to comply with California wage and hour
22 laws, and for claims under Business and Professions Code § 17200.

23 23. This action has been brought and may properly be maintained as a class action
24 pursuant to the provisions of Code of Civil Procedure § 382 and/or a representative action
25 under Business & Professions Code §§17200 *et seq.* and Labor Code §2699 because the
26 proposed class is ascertainable and there is a well-defined community of interest. Plaintiffs
27 are among in excess of 100 employees with like job titles, duties, and hourly wages, who
28 have been similarly injured by Defendants' uniform, unlawful conduct.

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1 24. The “Relevant Time Period” or proposed “Class Period” as defined herein
2 commences June 8, 2019. Plaintiff brings this action on their behalf and as a class action
3 under Cal. Code of Civil Procedure §382 on behalf of the following defined groups:

4 The proposed Subclasses are defined as follows:

- 5 A. Subclass One: (“Unpaid Wages Subclass”): All members of the Plaintiff
6 Class who, during the Class Period did not receive full payment for all
7 hours worked, including overtime.
- 8 B. Subclass Two: (“Meal Period Subclass”): All members of the Plaintiff
9 Class who, during the Class Period, were not provided an uninterrupted
10 meal period of not less than 30-minutes when employed for a work period
11 of more than five hours per day.
- 12 C. Subclass Three: (“Rest Period Subclass”): All members of the Plaintiff
13 Class who, during the Class Period, were not authorized or permitted by
14 Defendants’ policies and practices to take paid 10-minute rest period for
15 every four hours worked or every major fraction thereof.
- 16 D. Subclass Four: (“Waiting Time Subclass”): All members of the Plaintiff
17 Class who, during the Class Period, separated from employment with
18 Defendants, whether voluntarily or involuntarily, and who did not receive
19 their full final pay, including overtime, vested and accrued vacation pay,
20 and meal and rest break penalty pay, within the time limits required by
21 Labor Code §203.
- 22 E. Subclass Five: (“Wage Statement Subclass”): All members of the
23 Plaintiff class who were provided wage statements from Defendants
24 within the Class Period that did not accurately reflect the number of hours
25 worked and overtime compensation earned.
- 26 F. Subclass Six: (“The UCL Subclass”): All members of the Plaintiff Class
27 who, as a result of Defendants’ uniform and systematic policies, are owed
28 restitution.

1 25. This action is brought, and may properly be maintained, as a class action under
2 CCP §382 because there is a well-defined community of interest in the litigation, and the
3 proposed Class and Subclasses (collectively “Class”) are easily ascertainable.

4 A. Numerosity: The Proposed Class is so numerous that joinder of all members
5 is impractical. Plaintiff is informed and believes, and on that basis alleges,
6 that during the relevant time period, Defendants employed over 100 putative
7 Class Members who are geographically dispersed and who satisfy the
8 definition of the proposed Class. As such, a class action is the only available
9 method for the fair and efficient adjudication of this controversy.
10 Membership in the Proposed Class can be easily ascertained by an
11 examination and analysis of employee and payroll records, among other
12 records within Defendants’ possession and control.

13 B. Typicality: Plaintiff’s claims are typical of the claims of the Class Members.
14 Plaintiff, like others similarly situated, was subjected to Defendants’
15 common, unlawful policies, practices, and procedures described above. The
16 Plaintiff’s positions at the company was typical of those of other Class
17 Members. Plaintiff’s claims are typical of the claims of each Class Member
18 because each have sustained damages arising out of and caused by
19 Defendants’ common course of conduct, as alleged herein. As such, Plaintiff
20 has the same interests in this matter as all members of the Class.

21 C. Adequacy: Plaintiff will fairly and adequately protect the interests of the
22 members of the Class. Plaintiff has retained counsel competent and
23 experienced in complex class actions and California labor and employment
24 litigation.

25 D. Commonality: Common questions of law and fact exist, including but not
26 limited to the following:
27
28

- i. Whether Defendants unlawfully failed to pay Class Members with all wages due and owing upon separation of employment, including overtime wages;
- ii. Whether Defendants violated wage and hour laws by failing to provide all required, duty-free, 30-minute minimum meal periods;
- iii. Whether Defendants violated wage and hour laws by failing to provide all required rest periods;
- iv. Whether Defendants' policy and practice concerning meal breaks was unlawful;
- v. Whether Defendants' policy and practice concerning rest breaks was unlawful;
- vi. Whether Defendants unlawfully failed to keep and furnish Class Members with accurate, itemized records of hours worked, in violation of Labor Code §§ 226 and 1174;
- vii. Whether Defendants' policy and practice of failing to pay employees all wages owed twice per month violates Labor Code §204(a);
- viii. Whether Defendants' policy and practice of failing to pay its employees all wages due within the time required by law after their employment ended violates the law and warrants waiting time penalties under Cal. Labor Code §§ 200, 201, 202, 203, and 204;
- ix. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, the Class Members, and Subclass Members;
- x. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xi. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xii. Whether Defendants' conduct was willful and reckless;

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1 xiii. The effect upon and the extent of injuries suffered by Plaintiff and the
2 Plaintiff Class and the appropriate amount of reimbursement,
3 restitution, damages, or other compensation; and

4 xiv. What is the extent of liability of each Defendant, including DOE
5 defendants, to each Class and Subclass member?

6 E. Superiority: A class action is superior to other available methods of the fair
7 and efficient adjudication of the controversy, particularly in the context of
8 wage and hour litigation where the damage suffered by individual plaintiffs,
9 while not inconsequential, makes individual actions impracticable given the
10 expenses and burdens associated with seeking individual relief. Prosecuting
11 over 100 identical, individual lawsuits does not promote judicial efficiency
12 or equity and consistency in judicial results. Moreover, the Class is a group
13 of hourly, low-wage earning employees who rely on their wages and
14 requiring that each individual take time away from work to prosecute
15 individual actions would be inequitable and result in undue hardship for the
16 individual Class members and their families. Public policy favors efficient
17 resolution of their claims and uniform enforcement of California Labor laws
18 against entities skirting their legal obligations at the expense of a vulnerable
19 working population.

20 26. Manageability: Plaintiff is informed and believes that all allegations in this
21 Complaint are capable of being determined on the same evidence and based primarily on
22 review of corporate records and key testimony of Defendants' corporate representatives.
23 To the extent statistical analysis and representative evidence is necessary, Plaintiff and
24 proposed class counsel will employ competent experts and consultants in the field to
25 determine and review evidence for both issues of liability and damages in a scientifically
26 reliable manner.

27 27. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California
28 Rules of Court, that the absent Class and Subclass Members be notified by the best notice

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1 practicable under the circumstances, including individual notice to all members who can
2 be identified through reasonable effort. The names and address of the Class and Subclass
3 Members are available from Defendants.

4
5 **FIRST CAUSE OF ACTION**

6 **(Against Defendants for Rest Period Violations)**

7 28. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

8 29. Defendants have failed to maintain a complaint rest period policy and practice
9 that provides its employees with off-duty rest periods as required by California law.
10 Defendants are required to authorize or permit all of its hourly employees to take at least a
11 ten-minute rest period in which they were relieved of all duties, for every four (4) hours of
12 work, or major fraction thereof, as required by Cal. Lab. Code §§226.7, 512 and Wage
13 Order 1-2001 12(A).

14 30. Plaintiffs allege on information and belief that during the Class Period, as
15 alleged above, the Rest Period Subclass (also referred to within this cause of action
16 collectively as “Class”) members regularly worked through their rest periods and were not
17 provided required breaks. Defendants failed to pay the Class Members penalties for missed
18 rest periods. As a result of the aforementioned conduct, the Class Members have been
19 damaged according to proof at trial.

20 31. Plaintiff never received a rest break during the entire time she worked for
21 Defendants. Rest breaks were not permitted or provided. Defendants failed to pay Plaintiff
22 and similarly situated employees all premium compensation (one hour of pay at the
23 employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor
24 Code § 226.7(b) for these missed rest periods.

25 32. As a derivative claim, Plaintiffs also allege that their pay statements were
26 inaccurate, failing to include required rest period penalties, thus failing the requirements of
27 Labor Code §226(a). As a result of these violations, Defendants are liable for civil penalties
28 pursuant to Cal. Labor Code § 2698 *et seq.*

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1 33. Defendants' failure to pay these wages entitles the Class Members to additional
2 wages, pursuant to § 226.7, which provides that if an employer fails to provide an employee
3 a rest period in accordance with an applicable order of the IWC, the employer shall pay the
4 employee one additional hour of pay at the employee's regular rate of compensation for
5 each work day that the meal or rest period is not provided.

6 34. Plaintiff also will seek statutory penalties under Labor Code §226(a)(1) because
7 the failure to pay such premium wages rendered the gross pay calculations inaccurate in
8 violation of Labor Code §226(e)(2)(B)(i). Plaintiffs further seek prejudgment interest,
9 reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code and
10 Code of Civil Procedure §1021.5, or other applicable law.

11 **SECOND CAUSE OF ACTION**
12 **(Against Defendants for Meal Period Violations)**

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

15 36. During Plaintiff's employment, Defendants failed to maintain a complaint meal
16 period policy and practice. Defendants failed to provide all of its hourly employees with
17 their right to take an off-duty unpaid 30-minute first and second meal periods. Plaintiff
18 reports that she was never permitted to take a lunch break. Despite the consistent failure to
19 provide or permit meal periods, Plaintiff was only paid one meal period penalty (at
20 \$13/hour) during the entire time she was employed by Defendants.

21 37. Labor Code §512 provides. "[a]n employer may not employ an employee for a
22 work period of more than five hours per day without providing the employee with a meal
23 period of not less than 30 minutes . . ." Labor Code §512 and Wage Order 5-2001 11(B)
24 provide that an employer may not employ an employee for a work period of more than ten
25 (10) hours per day without providing the employee with a second meal period of not less
26 than 30 minutes. Labor Code § 226.7(a) provides, "[n]o employer shall require an
27 employee to work during any meal . . . period mandated by an applicable order of the
28 Industrial Welfare Commission." Paragraph 11(C) of the Wage Order provides, in pertinent

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1 part, “[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal
2 period shall be considered an ‘on duty’ meal period and counted as time worked.”

3 38. Here, Defendants made employees sign on-duty meal period agreements,
4 however the nature of the work was such that Defendants qualified for the exemption, so
5 the agreements were invalid. Moreover, employees were required to work during on-duty
6 meal periods and were not provided with any sort of break. As stated in *L’Chaim House,*
7 *Inc. et al. v. Division of Labor Standards Enforcement* (2019) 38 Cal. App. 5th 141, “[A]n
8 on-duty meal period is not the functional equivalent of no meal period at all. On-duty meal
9 periods are an intermediate category requiring more of employees than off-duty meal
10 periods but less of employees than their normal work.”

11 39. Defendants failed to permit Plaintiff and others to take timely, off-duty meal
12 breaks of “not less than 30 minutes” for each five consecutive hours of work in violation
13 of Labor Code §§226.7 and 512. As a derivative claim, Plaintiff and others allege that pay
14 statements were inaccurate, failing to include required meal period penalties, thus failing
15 the requirements of Labor Code §226(a). As a result of these violations, Defendants are
16 liable for civil penalties pursuant to Cal. Labor Code §2898 *et seq.*

17 40. Plaintiff will seek restitution pursuant to Labor Code §558(a)(3) for herself and
18 the proposed members of the Meal Period Subclass for each violation of Labor Code
19 §226.7. Further, as a derivative claim of failing to pay the premium pay of one (1) hour of
20 pay at the employee’s regular rate of compensation for each workday that the meal period
21 is not provided, Plaintiff will seek statutory penalties under Labor Code §226(a)(1) because
22 the failure to pay such premium wages rendered the gross pay calculations inaccurate in
23 violation of Labor Code §226(e)(2)(B)(i). Plaintiffs further seek reasonable costs of suit
24 and reasonable attorney’s fees as provided by the Labor Code and Code of Civil Procedure
25 §1021.5, or other applicable law.

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1 **THIRD CAUSE OF ACTION**

2 **(Against Defendants for Failure to Timely Pay All Wages Owed)**

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

5 42. Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an
6 employee, the wages earned and unpaid at the time of discharge are due and payable
7 immediately.” Labor Code section 202 states, in pertinent part, “[i]f an employee not
8 having a written contract for a definite period quits his or her employment, his or her wages
9 shall become due and payable not later than 72 hours thereafter, unless the employee has
10 given 72 hours previous notice of his or her intention to quit, in which case the employee
11 is entitled to his or her wages at the time of quitting.”

12 43. Labor Code section 203 provides that an employee’s wage shall continue as a
13 penalty from when they first became due at the same rate until paid for up to 30 days when
14 an employer willfully failed to timely pay all earned and unpaid wages in accordance with
15 Labor Code §§201 or 202.

16 44. Plaintiff is informed and believes and, based thereon, alleges that, during the
17 Class period, Defendants knowingly and willfully failed to pay Plaintiff and aggrieved
18 employees all wages due and owing upon separation of employment, including overtime
19 wages. Additionally, by furnishing Plaintiff and other separated aggrieved employees with
20 a final check that failed to include all meal and rest period penalties owed, Defendants
21 violated Labor Code §§201 and/or 202.

22 45. Defendants were required to pay Plaintiff and employees all wages, which
23 includes penalties, earned twice during each calendar month pursuant to Labor Code
24 §204(a). Defendants failed to pay all wages earned to employees as a result of the unlawful
25 employment policies and practices discussed herein, and this underpayment resulted in a
26 failure to pay all wages owed twice per month.

27 46. As alleged above, by failing to pay for all hours worked by Plaintiffs and the
28 Waiting Time Subclass, Defendants underpaid the actual amount of regular or overtime

1 hours worked by Plaintiffs and the rest of the Waiting Time Subclass. These unpaid
2 amounts were still owing to former employees in the Class when they ended their
3 employment with Defendants. Consequently, Defendants failed to timely pay all wages
4 due former employees in the Class at the time that their employment ended.

5 47. During the Class Period, Labor Code Section 203 provided that, if employers
6 such as Defendants willfully fail to pay any wages of an employee who is discharged or
7 who quits, the wages of the employee shall continue as a penalty from the due date thereof
8 at the same rate until paid or until an action therefore is commenced, but the wages shall
9 not continue for more than thirty (30) days. Accordingly, Class Members who were
10 discharged or who quit during the Class Period are entitled to receive their wages for each
11 day they were not paid, at their regular rate of pay, up to a maximum of thirty (30) days.

12 48. Plaintiff will seek both restitution for herself and members of the proposed
13 Waiting Time Subclass” for each violation of Labor Code §203 during the Class Period, in
14 an amount according to proof based on Defendants’ corporate and payroll records.

15 **FOURTH CAUSE OF ACTION**

16 **(Against Defendants for Failure to Furnish and Maintain Accurate Payroll 17 Records)**

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

20 50. California Labor Code § 226(a) provides that “[e]very employer shall,
21 semimonthly or at the time of each payment of wages, furnish each of his or her
22 employees...an accurate itemized statement in writing showing (1) gross wages earned, (2)
23 total hours worked..., (3) the number of piece-rate units earned and any applicable piece
24 rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned,
25 (6) the inclusive dates of period for which the employee is paid, (7) the name of the
26 employee and his or her social security number..., (8) the name and address of the legal
27 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
28 and the corresponding number of hours worked at each hourly rate by the employee.”

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1 51. Labor Code §1174 provides that “[e]very employer employing labor in this state
2 shall ... (c) [k]eep a record showing the names and addresses of all employees employed
3 and the ages of all minors [and] (d) [k]eep at a central location in the state or at the plants
4 or establishments at which employees are employed, payroll records showing the hours
5 worked daily by and the wages paid to, and the number of piece-rate units earned by and
6 any applicable piece rate paid to, employees employed at the respective plants or
7 establishments. These records shall be kept in accordance with rules established for this
8 purpose by the commission, but in any case shall be kept on file for not less than two years.”

9 52. Plaintiffs allege on information and belief that Defendants knowingly and
10 intentionally failed to furnish the Class Members and “Wage Statement Subclass” (also
11 referred to within this cause of action collectively as “Class”) with accurate itemized
12 statements for each pay period that they worked and failed to maintain accurate payroll
13 records of the Class Members as mandated by Labor Code §§ 226 and 1174. Inaccuracies
14 in the wage statements and payroll records were caused, among other reasons, by
15 Defendants’ unlawful timekeeping practices discussed above and herein. Plaintiffs allege
16 on information and belief that as a result of Defendants’ conduct, the Class Members
17 sustained damages. As such, the Class Members are entitled to civil penalties and an award
18 of costs and attorney's fees under § 226(e). In addition, the Class Members are entitled to
19 recover civil penalties under § 1174.5.

20 **FIFTH CAUSE OF ACTION**

21 **(Against all Defendants for Unlawful Business Practices Under Business &**
22 **Professions Code § 17200)**

23 53. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

24 54. The unlawful timekeeping practices resulting in unpaid wages, unpaid overtime,
25 failure to provide required meal and rest breaks, and constitute unlawful and unfair
26 business acts and/or practices within the meaning of Business and Professions Code
27 §17200 *et seq.*, including but not limited to violations of the applicable State of California
28

1 Industrial Welfare Commission Wage Orders, regulations and statutes, or are practices
2 which are otherwise unfair, deceptive and unlawful.

3 55. Indeed, Defendants' failure to pay the wages to Plaintiff and other aggrieved
4 employees as alleged above constitutes an unlawful, unfair or fraudulent business act or
5 practice, in violation of Business & Professions Code § 17200 et seq.

6 56. Pursuant to Business & Professions Code § 17203, the members of the UCL
7 Subclass are entitled to restitution of premium wages and other pay owed, including
8 penalty pay, where such wages were due during the Class Period, according to proof.

9 57. In addition, unless the Court imposes an injunction against Defendants requiring
10 Defendants to pay full wages in the future, the UCL Subclass (also referred to within this
11 cause of action collectively as "Class") members will suffer immediate and irreparable
12 harm and will have no adequate remedy at law. Accordingly, the Class Members request
13 that this Court enter a preliminary and permanent injunction requiring Defendants to cease
14 and desist from their unlawful business practices and pay compensation as required by
15 California law.

16 58. This cause of action is brought as a cumulative remedy as provided in Business
17 and Professions Code § 17205, and is intended as an alternative remedy for restitution for
18 Plaintiff and members of the relevant subclasses for any portion of time commencing June
19 8, 2019 and continuing to the present.

20 59. Plaintiff, on behalf of herself and the proposed UCL Subclass requests the
21 violations of each Defendant be enjoined, and other equitable relief provided, as this court
22 deems proper, including an order requiring Defendants to make tax contributions on the
23 accrued wages in the form of FICA, Social Security, Medicare, Unemployment Insurance
24 or other applicable payments. Defendants' conduct, business acts and practices undermined
25 competition and was done in order to avoid costs other lawful employers comply with in
26 order to avoid payment of full compensation, wages and statutory penalties owed.

27 60. Plaintiff and the members of the proposed UCL Subclass request relief, as
28 described below, including restitution owed, in an amount according to proof, and for

1 reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code and
2 the Code of Civil Procedure § 1021.5, or other applicable law.

3 **SIXTH CAUSE OF ACTION**

4 **(STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS**
5 **GENERAL ACT, LABOR CODE §2698 *Et Seq.* AGAINST ALL DEFENDANTS)**

6 61. Plaintiff incorporates by reference in this cause of action each allegation of the
7 preceding paragraphs as though fully set forth herein.

8 62. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5,
9 an aggrieved employee, on behalf of herself and other current or former employees, may
10 recover penalties under any provision of the Labor Code that provides for civil penalties.
11 These penalties are in addition to any other relief available under the Labor Code. Plaintiff
12 is an aggrieved employee under PAGA.

13 63. As set forth above, Defendants have committed numerous violations for which
14 the Labor Code provides for penalties, including violations of all applicable Labor Code
15 provisions set forth in the foregoing causes of action. Labor Code §2699.5 identifies the
16 aforementioned Labor Code provisions as statues to which §2699.3's procedural
17 requirements must be met before a penalty may be assessed under §2699(f). Plaintiff has
18 complied with the procedural requirements specified in §2699.3 by providing written
19 notice to the Defendants and the Labor & Workforce Development Agency ("LWDA").
20 See Exhibit 1 attached hereto, which is a true and correct copy of the Notice
21 correspondence showing compliance with §2699.3. No notice of intent to investigate the
22 alleged violations was provided within the statutory period. Consequently, Plaintiff has
23 exhausted administrative remedies, and on behalf of themselves and all other aggrieved
24 current and former employees of Defendants. Plaintiff, therefore, now pursues this cause
25 of action as permitted by §2698, et seq.

26 64. Enforcement of statutory provisions enacted to protect workers and to ensure
27 proper and prompt payment of wages due to employees is a fundamental public interest in
28 California. Consequently, Plaintiff's success in this action will result in the enforcement of

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1 important rights affecting the public interest and will confer a significant benefit upon the
2 general public. Private enforcement of the rights enumerated herein is necessary, as no
3 public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing
4 this action and it would be against the interests of justice to require payment of attorneys'
5 fees and costs from any recover that might be obtained herein, pursuant to, inter alia, Labor
6 Code §§2698, *et seq.*, and Code of Civil Procedure §1021.5

7 65. In addition, if Plaintiff succeeds in enforcing these rights affecting the public
8 interest, then attorneys' fees may be awarded to Plaintiff and against Defendants under
9 Code of Civil Procedure §1021.5 and other applicable law in part, because:

10 a. A successful outcome in this action will result in the enforcement of
11 important rights affecting the public interest by requiring Defendants to comply with the
12 wage and hour laws and California's unfair business practice law;

13 b. This action will result in a significant benefit to Plaintiff, the Class, and the
14 general public by bringing to a halt unlawful and/or unfair activity;

15 c. Unless this action is prosecuted, members of the Class and general public
16 will not recover those moneys, and many of Defendants' employees would not be aware
17 that the acts and practices they were subjected to by Defendants were wrongful;

18 d. Unless this action is prosecuted, Defendants will continue to mislead their
19 employees about the true nature of their rights and remedies under the wage and hour laws;
20 and

21 66. An award of attorneys' fees and costs is necessary for the prosecution of this
22 action and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to
23 consumers in general, by preventing Defendants from continuing to circumvent the wage
24 and hour statutes and frustrate the long-standing recognition by the California legislature
25 and the courts that such statutes, as pled herein, are not merely a matter of private concern
26 between employer and employee to be eviscerated by considerations of waiver,
27 contributory negligence, good or bad faith, and private agreements. Rather, the wage and
28

1 hour statutes have been described as a matter of public concern, were designed to provide
2 minimum substantive guarantees to individual workers and are essential to public welfare.

3 67. Through this representative action, Plaintiff will advance the interests of
4 hundreds of current and former employees, such that joinder is impracticable. These
5 current and former employees can be readily be identified through a review of Defendants'
6 payroll records and the records of the company that handles payroll for Defendants.

7 68. Plaintiff seeks to recover the PAGA civil penalties through a representative
8 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
9 (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein
10 is not required.

11 **REQUEST FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of herself and the Proposed Class, request
13 judgment and the following specific relief against Defendants as follows:

- 14 A. That the Court determine that this action may be maintained as a class
15 action under Code of Civil Procedure § 382;
- 16 B. That the Court determine that this action may be maintained as a PAGA
17 representative action under Cal. Labor Code. §2698 et seq;
- 18 C. Provision of class notice to all members of the Class;
- 19 D. That Defendants are found to have violated the above-referenced
20 provisions of the Labor Code, CCR and IWC Wage Order 5-2001 as to
21 Plaintiff, Class Members and relevant subclass Members;
- 22 E. For compensatory damages, in an amount according to proof at trial, with
23 interest thereon;
- 24 F. For compensation for not being provided compliant rest breaks;
- 25 G. For compensation for not being provided compliant meal periods;
- 26 H. That Defendants' actions are found to be willful and/or in bad faith to the
27 extent necessary under §§ 201, 202, 203, 204 and 558 of the California
28 Labor Code for willful failure to pay all compensation owed at the time

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1 of separation to Plaintiff, Class Members, and Aggrieved Employees no
2 longer employed by Defendant;

3 I. That Plaintiff, Class Members, and Aggrieved Employees receive
4 penalties for Defendants' violation of §226 and 1174 of the California
5 Labor Code for willful failure to provide and maintain the required
6 accurate and itemized wage statements;

7 J. That Plaintiff, Class Members, and Aggrieved Employees receive an
8 award in the amount of unpaid wages owed, including interest thereon,
9 and penalties as provided in the Labor Code, CCR and Wage Order,
10 including under Labor Code §§ 203, 510, and 558, subject to proof at
11 trial;

12 K. That Plaintiff, Class Members, and Aggrieved Employees receive
13 damages pursuant to §§248.5 in addition to reasonable attorneys' fees,
14 and costs of suit pursuant to Labor Code § 218.5 and CCP 1021.5;

15 L. That Defendants be ordered to pay restitution to Plaintiff, Class Members,
16 and Aggrieved Employees for amounts acquired through Defendants'
17 unlawful activities pursuant to Business and Professions Code §§ 17200-
18 05 and enjoined to cease and desist from unlawful and unfair activities in
19 violation of California Business and Professions Code § 17200 et. seq.;

20 M. That Plaintiff, Class Members, and Aggrieved Employees receive an
21 award of reasonable attorneys' fees and costs pursuant to Code of Civil
22 Procedure §1021.5, Labor Code §226, 218.5, and 1194 and/or applicable
23 laws;

24 N. That the Court award penalties pursuant to Labor Code §2698 et seq;

25 O. That the Court issue declaratory relief that Defendants' challenged
26 policies are unlawful; and

27 ///

28 ///

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1 P. That the Court order further relief, in law and equity, as it deems
2 appropriate and just.

3 DATED: January 11, 2021

KOUL LAW FIRM

4 

5
6 BY: Nazo Koulloukian, Esq.
7 Attorneys for Plaintiff DENISHA
8 JOHNSON and putative class members

9
10
11 ***DEMAND FOR JURY TRIAL***

12
13 Plaintiff, on behalf of herself and the putative class, hereby demands trial by jury
14 to the full extent permitted by law.

15
16 DATED: January 11, 2021

KOUL LAW FIRM

17 

18
19 BY: Nazo Koulloukian, Esq.
20 Attorneys for Plaintiff DENISHA
21 JOHNSON and putative class members

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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

June 8, 2020

Via E-filing:

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

Via Certified U.S. Mail:

Route 66 Post Acute LLC
c/o Rosie Andrade
107 W. Lemon Ave
Monrovia, CA 91016

Route 66 Post Acute
638 E. Colorado Ave.
Glendora, CA 91740

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Denisha Johnson
Employer: Route 66 Post Acute LLC

Dear Sir or Madam:

Denisha Johnson has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, Route 66 Post Acute LLC (hereafter “Employer.”)

Employer requires employees to work under conditions that violate California wage and hour laws, including denying required meal and rest periods, and underpaying low-wage earners by depriving them of required penalty wages. This PAGA representative action would represent hundreds of current and former employees. Claimant worked for Employer in Glendora as a dietary aid helping to make sure residents of the facility received the specific meals they needed to meet their nutritional requirements and dietary restrictions until August of 2019, earning \$13/hour.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it 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 Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Employer is required to 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 Wage Order 1-2001 12(A).

Claimant never received a rest break during the entire time she worked for Employer. Rest breaks were not permitted or provided. Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimants also allege that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*

During Claimant’s employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute first and second meal periods. Claimant reports that she was never permitted to take a lunch period. Despite the consistent failure to provide or permit meal periods, Claimant was only paid one meal period penalty (at \$13/hour) during the entire time she was employed by Employer.

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 §512 and Wage Order 5-2001 11(B) provide that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second 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(C) of the Wage Orders 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.”

Here, Employer made employees sign on-duty meal period agreements, however the nature of the work was not such that Employer qualified for the exemption so the agreements were invalid. Moreover, employees were required to work during on-duty meal periods, and were not provided with any sort of break. As stated in *L’Chaim House, Inc. et al. v. Division of Labor Standards Enforcement* (2019) 38 Cal. App. 5th 141, “[A]n on-duty meal period is not the functional equivalent of no meal period at all. On-duty meal periods are an intermediate category requiring more of employees than off-duty meal periods but less of employees than their normal work.”

Employer failed to permit claimants 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. As a derivative claim, claimants allege that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Timely Pay All Wages Owed

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

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an

employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Employer willfully failed to pay Claimant and aggrieved employees all penalty wages due and owing upon separation of employment. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all meal and rest period penalty wages owed, Employer violated Labor Code sections 201 and/or 202.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employees all wages, which includes penalty 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, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Accurate Itemized Wage Statements

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

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. Wage statements issued by Employer fail to accurately reflect actual gross wages earned, including overtime and meal/rest premiums. Employer knowingly and intentionally failed to permit or provide compliant meal or rest periods, knowingly failed to pay premiums for missed meal and rest periods, and knowingly failed to report required premiums on wage statements and in employee records. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq*.

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 them if it does not intend to investigate these violations so that they may pursue their claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Sahag Majarian, II, Esq.
Attorney for Claimant

Cc:

Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356