

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

APR 13 2018

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**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Seasons Hospice & Palliative Care of California - San Bernardino, LLC,
a limited liability company; DOES 1 through 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTA DEMANDANDO EL DEMANDANTE):**

Angelica Serrano, an individual

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

JAVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DIAS DE CALENDARIO despues de que le entreguen esta citación y papeles legates para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y mas información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de /eyes de su condado o en la corte que le quede mas cerca. Si no puede pagar la cuota de presentación pida al secretario de la corte que le de un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podra quitar su sueldo, dinero y bienes sin mas advertencia.

Hay otros requisitos lega/es. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con las requisitos para obtener servicios legales gratuitos de un programa de servicios legates sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniendose en contacto con la corte o el colegio de abogados locales. AVISO: Par fey, la corte tiene derecho a reclamar las cuotas y las costos exentos par imponer un gravamen sobre cualquier recuperaci6n de \$10,000 o mas de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California County of San Bernardino
247 West Third Street, San Bernardino, CA 92415-0210

CASE NUMBER:
(Numero/el Caso: I' /J) S'1- 0- 16

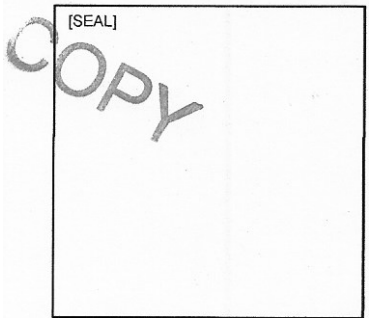
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David V. Jafar i, 18201 Von Karman Ave., Suite 1190, Irvine, CA 92612 (949), 362-0100

DATE: APR 13 2018 Clerk by Eden Staricka, Deputy
(Fecha) .ll. @ (Secretario) (Adjunto)

(For proof of service of this summons, use the Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify). Seasons Hospice & Palliative Care of California
under: CCP416.10(corporation) CCP 416.60(minor)
 CCP 416.20(defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 [Z] other (specify): Limited Liability Company
- by personal delivery on (date):



David V. Jafari (CA Bar No. 207881)
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Saul Acherman (CA Bar No. 288036)
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

APR 13 2011

BY T. ...L,
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Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

STVD81808049

ANGELICA SERRANO, an individual,

Case No.: [Number]

Plaintiff,

vs.

COMPLAINT FOR:

SEASONS HOSPICE & PALLIATIVE CARE
OF CALIFORNIA-SAN BERNARDINO, LLC,
a California limited liability company; and
DOES 1 through 100, inclusive,

- 1) Retaliation in Violation of California Labor Code § 1102.5;
- 2) Wrongful Termination in Violation of Public Policy;
- 3) Unpaid Meal Period Wages in Violation of IWC Wage Order No. 4-2001 and California Labor Code §§ 226.7 and 512;
- 4) Unpaid Rest Period Wages in Violation of [WC Wage Order No. 4-2001 and California Labor Code § 226.7;
- 5) Unpaid Overtime Wages in Violation of IWC Wage Order 4-2001 and California Labor Code §§ 510 and 1194;
- 6) Waiting Time Penalties in Violation of California Labor Code §§ 201 and 203;
- 7) Failure to Provide Accurate Itemized Statements in Violation of California Labor Code § 226;

Defendants.

- Complaint Continues on Next Page -

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- 8) Failure to Permit Plaintiff to Inspect or Copy Her Employment Records in Violation of California Labor Code § 226(c);
- 9) Failure to Make Plaintiffs Personnel Record Available in Violation of California Labor Code § 1198.5(b)(1);
- 10) Failure to Reimburse for All Expenses Incurred in Violation of Labor Code § 2802; and
- 11) Unlawful Business Practices in Violation of California Business and Professions Code § 17200 *et seq.*

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

1) Plaintiff ANGELICA SERRANO ("Plaintiff"), an individual, hereby alleges against
1 Defendants, SEASONS HOSPICE & PALLIATIVE CARE OF CALIFORNIA-SAN
2 BERNARDINO, LLC, a California limited liability company ("Seasons Hospice"), and DOES1
3 through 100, inclusive (collectively, "Defendants"), as follows:

5
6 **SUMMARY OF THE CASE**

7 2) This action is being brought by Plaintiff against Defendants to challenge its policies and
8 practices of: (1) retaliating against Plaintiff who raised complaints related to patient care and
9 safety; (2) failing to authorize, permit, and /or make available meal and rest periods to which
10 Plaintiff is entitled by law and failing to pay premium pay for these missed breaks; (3) as a result
11 of the missed breaks, failing to pay Plaintiff for all hours worked, including overtime
12 compensation; (4) failing to provide proper and correct itemized wage statements; (5) failing to
13 pay all wages owed after Plaintiff's employment with Defendants was involuntarily terminated;
14 (6) failing to allow Plaintiff to inspect her payroll records; and (7) failing to make Plaintiff's
15 personnel record available. Plaintiff alleges that Defendants have engaged in unlawful practices
16 of failing to meet the requirements of the California Labor Code, the applicable Industrial Welfare
17 Commission ("IWC") Wage Order, and the California Business and Professions Code.

18
19 **JURISDICTION AND VENUE**

20 3) Jurisdiction is conferred on this Court over Defendants named herein as residents of the
21 state of California and/or conductors of business in the state of California. Jurisdiction is
22 conferred on this Court as to all causes of action as they arise under state statute or common law.

23 4) Venue is proper in this Court because Plaintiff resides in this County, Defendants reside
24 and/or conduct business in this County, and a substantial part of the events and omissions giving
25 rise to Plaintiff's causes of action occurred in this County.

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1 **THE PARTIES**

2 5) Plaintiff Angelica Serrano is an individual residing in Adelanto, California.

3 6) Defendant Seasons Hospice is a California limited liability company with its principal
4 place of business at 8686 Haven Ave., Suite 300, Rancho Cucamonga, California 91730. Seasons
5 Hospice is a community-based hospice and palliative care facility that offers end-of-life care to
6 its patients at the patient's residence. Plaintiff is informed and believes, and thereon alleges, that
7 Seasons Hospice is, and at all pertinent times alleged herein was, doing business in the County of
8 San Bernardino.

9 7) The true names, identities, or capacities, whether individual, corporate, associate, or
10 otherwise, of DOES 1 through 100, inclusive, are unknown to Plaintiff. When the true names,
11 identities, or capacities of such fictitiously designated Defendants are ascertained, Plaintiff will
12 ask leave of this Court to amend this Complaint to insert their true names, identities, and
13 capacities, together with the proper charging allegations. Plaintiff is informed and believes and
14 thereon alleges that some or all of the fictitiously named Defendants are responsible in some
15 manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were
16 proximately caused by those defendants.

17 8) Plaintiff believes and therefore alleges that at all times herein mentioned, each of the
18 Defendants was the agent and employee of each of the other Defendants, and in doing the acts
19 alleged herein, was acting within the scope of such agency and employment. Plaintiff further
20 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was
21 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the
22 other said Defendants.

23
24 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 9) Beginning on or about April 11, 2016, Plaintiff was employed by Defendants as a
26 registered nurse at Defendant Seasons Hospice's facility located in Rancho Cucamonga,
27 California, in the County of San Bernardino. Plaintiff's duties included making individualized
28 care plans, evaluating new patients, advocating for patient welfare, serving as a liaison between

patients, patients' families, and health care providers, and providing nursing care to hospice patients. Beginning on or about January 2017, Seasons Hospice hired new management. Specifically, Alisa Clark ("Clark") was hired as the director of clinical operations, and Susan Nganga ("Nganga") was hired as the executive director.

10) Plaintiff took her job seriously and worked diligently to ensure that patients were receiving the proper care and treatment they needed. Patients liked and appreciated how Plaintiff took serious interest in each patient's case and performed her duties with kindness and compassion. On one instance, a patient who was about to pass away asked Plaintiff not to leave until the patient passed. Plaintiff had a team meeting she had to attend but, like any compassionate human being, stayed by that patient's side until the patient passed away.

11) Plaintiff never had problems with patients, co-workers, or management until Clark and Nganga were hired as new management. After new management was hired, the level of patient and employee care drastically declined. When Plaintiff stayed by the previously -mentioned patient's side until the patient passed away, Plaintiff was late for the team meeting. Plaintiff apologized for her tardiness and explained the situation to Nganga, Nganga told Plaintiff not to be late again, disregarding the care and compassion Plaintiff showed a patient in the patient's last moments of life.

12) Another incident began when one of Plaintiff's co-workers began spreading hurtful rumors about Plaintiff to Plaintiff's patients, saying that Plaintiff was bad at her job and an ineffective case manager. Plaintiff reported the incident but the new management never attempted to clear up the issue.

13) Plaintiff also received reports that patients had fallen in their residences and called Defendant Seasons Hospice for help, but Seasons Hospice never sent anyone to assist the patient or provide care. After learning of neglect, lack of compassion, and dereliction of duty on the part of Defendant Seasons Hospice, Plaintiff filed multiple reports detailing what the patients told her about Defendant Seasons Hospice's lack of response. Within days of filing her first neglect-related report with Defendant Seasons Hospice, Plaintiff's employment was terminated on April 27, 2017, and Defendant failed to compensate Plaintiff all of her unpaid wages, including missed

1 meal breaks, rest breaks, and unpaid overtime. Defendants show such contempt toward Plaintiff
2 that Defendants did not even respond to a request by Plaintiff's representatives to inspect
3 Plaintiff's employment and personnel records, let alone actually providing Plaintiff's records.
4

5 **FIRST CAUSE OF ACTION FOR RETALIATION IN VIOLATION**

6 **OF LABOR CODE § 1102.5(a) - (b) AGAINST ALL ENTITY**

7 **DEFENDANTS AND DOES 1 THROUGH 100**

8 14) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
9 paragraphs as though fully set forth herein.

10 15) At all times relevant to this Complaint, California Labor Code § 1102.5 was in effect and
11 applied to Defendants. Labor Code § 1102.5(a) provides that "[a]n employer, or any person acting
12 on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy
13 preventing an employee from disclosing information to ... a person with authority over the
14 employee, or to another employee who has authority to investigate, discover, or correct the
15 violation or noncompliance . . . if the employee has reasonable cause to believe that the
16 information discloses a violation of state or federal statute, or a violation of noncompliance with
17 a local, state, or federal rule or regulation, regardless of whether disclosing the information is part
18 of the employee's job duties."

19 16) At all times relevant to this Complaint, California Labor Code § 1102.5(b) was in effect
20 and applied to Defendants. Labor Code § 1102.5(b) states that "(a)n employer, or any person
21 acting on behalf of the employer, shall not retaliate against an employee for disclosing
22 information, or because the employer believes that the employee disclosed or may disclose
23 information, to a government or law enforcement agency, to a person with authority over the
24 employee or another employee who has the authority to investigate, discover, or correct the
25 violation or noncompliance, or for providing information to, or testifying before, any public body
26 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe
27 that the information discloses a violation of state or federal statute, or a violation of or
28 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing

the information is part of the employee's job duties."

2 17) At all times relevant to this Complaint, California Labor Code § 1105 was in effect and
3 applied to Defendants, and this section permits a plaintiff who suffers a violation of Labor Code
4 § 1102.5 to file an action for damages.

5 18) Plaintiff engaged in legally protected activity covered by Labor Code §§ 1102.5(a)-(b) by
6 internally reporting grievances or complaints relating to the safety of and care for hospice patients
7 of which Plaintiff was legally obligated to report pursuant to California Health and Safety Code
8 § 1796.42(e) (which requires a report of "any suspected or known dependent adult or elder abuse
9 as required by Section 15630 of the Welfare and Institutions Code") and California Welfare and
10 Institutions Code § 15630(b)(1) (which requires "[a]ny mandated reporter who, in his or her
11 professional capacity, or within the scope of his or her employment, has observed or has
12 knowledge of an incident that reasonably appears to be ... neglect, or is told by an elder or
13 dependent adult that he or she has experienced behavior, including an act or omission,
14 constituting ... neglect, or reasonably suspects that abuse, shall report the known or suspected
15 instance of abuse.").

16 19) On or about April 04, 2017, Plaintiff filed her first adverse event report relevant to this
17 Complaint ("April 4 Report"). The April 4 Report detailed reports from a patient that one of
18 Plaintiff's co-workers was telling patients that Plaintiff was bad at her job and an ineffective case
19 manager. Plaintiff was forced to file the April 4 Report in order to address an attack on Plaintiff's
20 reputation and character by one of Plaintiff's co-workers. Despite having knowledge of the
21 incident, Clark failed to take any actions to resolve the matter.

22 20) On or about April 18, 2017, Plaintiff filed a second adverse event report ("April 18
23 Report"). The April 18 Report stated that a patient's wife called Defendants for assistance with
24 helping her husband, the patient, who had fallen. Despite being aware of the patient's fall,
25 Defendants failed to send anyone to the patient's residence to help and care for the patient.
26 Instead, the patient's family had to call 9-1-1 for assistance. Defendants also failed to perform a
27 fall assessment on the patient.

28 21) On or about April 20, 2017, and April 26, 2017, Plaintiff filed a third and fourth adverse

event report regarding the same patient who had again fallen (" Final Reports"). Despite having
2 (1) the knowledge that a patient under their care had fallen multiple times in the span of a few
3 days, and (2) the responsibility and duty to provide assistance and care for patients in its charge,
4 Defendants did not send its employees to assist the patient or provide medical care. As a result of
5 not properly responding to information about hospice patients falling and potentially injuring
6 themselves, Defendants failed to ensure that patients were not subjected to acts of (1) abuse as
7 that term is defined in Welfare and Institutions Code§ 15610.07, and (2) neglect as that term is
8 defined under Welfare and Institutions Code§ 15610.57.

9 22) Plaintiff is informed, and believes and thereon alleges, that Plaintiff's filing of multiple
10 adverse event reports regarding Defendants' lack of response to information about patients
11 injuring themselves motivated the retaliation Plaintiff suffered including the termination of her
12 employment. This is evidenced by the fact that Defendants terminated Plaintiff's employment
13 within days of Plaintiff filing her first adverse event report.

14 23) As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost and
15 will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims such
16 amount as damages together with pre-judgment interest pursuant to Civil Code§ 3287 and/or any
17 other provision of law providing for pre-judgment interest.

18 24) As a result of the aforesaid acts of Defendants, Plaintiff claims general damages for mental
19 and emotional distress and aggravation in an amount to be proven at the time of trial.

20 25) As a proximate result of the foregoing conduct, which violated the provisions of Labor
21 Code§ 1102.5(a)--(b), Plaintiff has been forced to and will incur attorney's fees and costs in the
22 prosecution of this claim in an amount to be proven at trial. Plaintiff is in the process of exhausting
23 her administrative remedies under the Labor Code Private Attorney Generals Act of 2004 (Labor
24 Code § 2698, *et seq.*) as indicated herein, and will amend this Complaint upon exhaustion to plead
25 all rights and remedies available under this Act, including the recovery of attorney's fees for a
26 proven violation of Labor Code§ 1102.5.

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SECOND CAUSE OF ACTION FOR WRONGFUL TERMINATION
IN VIOLATION OF PUBLIC POLICY AGAINST
ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100

26) Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

27) Plaintiff's employment was terminated in violation of the fundamental public policies of the State of California, including, without limitation, encouraging nurses, members of medical staff, and other health care workers to report suspected unsafe patient care without fear of retaliation, and the right to prohibit employers from retaliating against employees who disclose information about unsafe patient care. These substantial and fundamental public policies are for the benefit of the public and not just the private interests of the employer and employee because these public policies create safe and rehabilitating environments for patients. These public policies are found, without limitation, in California Health and Safety Code § 1278.5(a).

28) As set forth above, said actions by Defendants were wrongful and in violation of the fundamental principles of the public policy of the State of California as reflected in its laws, objectives, and policies. Said laws, which establish these fundamental public policies include, without limitation, California Labor Code § 1102.5 and the California Constitution.

29) As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest pursuant to Civil Code § 3287 and/or any other provision of law providing for pre-judgment interest.

30) As a result of the aforesaid acts of Defendants, Plaintiff claims general damages for mental and emotional distress and aggravation in an amount to be proven at the time of trial.

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1 **THIRD CAUSE OF ACTION FOR UNPAID MEAL PERIOD WAGES IN VIOLATION**
2 **OF IWC WAGE ORDER NO. 4-2001 AND LABOR CODE §§ 226.7 AND 512**
3 **AGAINST ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

4 31) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
5 paragraphs as though fully set forth herein.

6 32) At all times relevant to this Complaint, IWC Wage Order 4-2001 and California Labor
7 Code §§ 226.7 and 512(a) were applicable to Plaintiff.

8 33) IWC Wage Order 4-2001 § 11 states that an employer shall not employ an employee for
9 a work period of more than five hours without a meal period of less than thirty minutes, except
10 that if a work period of not more than six hours will complete the day's work, the meal period
11 may be waived by mutual consent of the employer and employee.

12 34) California Labor Code § 226.7 provides that no employer shall require an employee to
13 work during any meal period mandated by an applicable IWC Wage Order.

14 35) California Labor Code § 512(a) provides that an employer may not require, cause, or
15 permit an employee to work for a period of more than five hours per day without providing the
16 employee with a meal period of not less than thirty minutes, except that if the total work period
17 per day of the employee is not more than six hours, the meal period may be waived by mutual
18 consent of both the employer and the employee.

19 36) From the time Clark and Nganga assumed their roles as new management in January 2017,
20 Plaintiff was required to work for periods longer than five hours without a meal period of not less
21 than thirty minutes. For example, Defendants instituted a weekly team meeting where Plaintiff
22 and her co-workers would provide reports on the patients; these meetings occurred each Thursday.
23 During the Thursday meetings, Plaintiff would attempt to step out for a quick bite to eat but would
24 immediately receive a message from Clark stating that Plaintiff needed to come back and make
25 her report even though it was not yet Plaintiff's time to do so. As a result, Plaintiff, who started
26 her work day at 8:30 am, was unable to take her meal period until after 3:30 pm, at least a full
27 seven hours after she began work for the day.

28 37) Pursuant to the IWC Wage Order 4-2001 § 11 and California Labor Code § 226.7(c),

1 Plaintiff is entitled to recover from Defendants one additional hour of pay at Plaintiffs regular
2 rate of compensation for each workday the meal period was not provided.

3 38) During the relevant time period, Defendants willfully required Plaintiff to work during
4 meal periods and failed to compensate Plaintiff for work performed during meal periods. As a
5 result, Plaintiff worked through meal periods, took late meal periods, or took short meal periods,
6 if at all. Defendants failed to pay Plaintiff the full meal period premium due in violation of
7 California Labor Code § 226.7, and Plaintiff is entitled to receive that compensation in an amount
8 to be proven at trial.

9 39) Thus, Defendants' conduct violates JWC Wage Order 4-2001 § 11 and California Labor 10
Code §§ 226.7 and 512.

11
12 **FOURTH CAUSE OF ACTION FOR UNPAID REST PERIOD WAGES IN VIOLATION**
13 **OF IWC WAGE ORDER NO. 4-2001 AND LABOR CODE § 226.7**
14 **AGAINST ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

15 40) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
16 paragraphs as though fully set forth herein.

17 41) At all times relevant to this Complaint, IWC Wage Order 4-2001 and California Labor
18 Code § 226.7 were applicable to Plaintiff.

19 42) IWC Wage Order 4-2001 § 12 states that an employer shall authorize and permit all
20 employees to take rest periods, which insofar as practicable shall be in the middle of each work
21 period. The authorized rest period time shall be based on the total hours worked daily at the rate
22 of ten minutes net rest time per four hours or major fraction thereof.

23 43) California Labor Code § 226.7 provides that no employer shall require an employee to
24 work during any rest period mandated by an applicable IWC Wage Order.

25 44) Pursuant to IWC Wage Order 4-2001 § 12 and California Labor Code § 226.7(c), Plaintiff
26 is entitled to recover from Defendants one additional hour of pay at Plaintiffs regular hourly rate
27 of compensation for each work day that the rest period was not provided.

28 45) From the time Plaintiff's employment began with Seasons Hospice, Defendants required

1 Plaintiff to work four or more hours without authorizing or permitting a ten minute rest period for
2 each four-hour period worked. Plaintiff was never provided the opportunity to take a ten minute
3 off-duty rest period, and Plaintiff never felt free to take a rest break. On at least one occasion
4 during Plaintiff's employment with Defendants, for example, Plaintiff attempted to go to the
5 restroom. However, Nganga stepped in front of Plaintiff and said Plaintiff could not leave. As a
6 result of Defendants' actions and policies, Plaintiff was required to work through her rest periods.

7 46) During the relevant time period, Defendants willfully required Plaintiff to work during
8 rest periods and failed to compensate Plaintiff for work performed during said rest periods. As a
9 result, Plaintiff did not receive proper rest periods. Defendants failed to pay Plaintiff the full rest
10 period premium due in violation of IWC Wage Order No. 4-2001 § 12 and California Labor Code
11 § 226.7, and Plaintiff is entitled to receive that compensation in an amount to be proven at trial.

12 47) Thus, Defendants' conduct violates IWC Wage Order 4-2001 § 12 Order and California
13 Labor Code § 226.7.

14
15 **FIFTH CAUSE OF ACTION FOR UNPAID OVERTIME WAGES IN VIOLATION**
16 **OF IWC WAGE ORDER 4-2001 AND LABOR CODE §§ 510 AND 1194**
17 **AGAINST ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

18 48) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
19 paragraphs as though fully set forth herein.

20 49) At all times relevant to this Complaint, IWC Wage Order 4-2001 and California Labor
21 Code §§ 510 and 1194 were applicable to Plaintiff.

22 50) IWC Wage Order 4-2001 § 3 states that employees shall not be employed more than eight
23 hours in any workday or more than forty hours in any workweek unless the employee receives
24 one and one-half times such employee's regular rate of pay for all hours worked in excess of eight
25 hours up to and including twelve hours in any workday, and for the first eight hours worked on
26 the seventh consecutive day of work in a workweek, and double the employee's regular rate of
27 pay for all hours worked in excess of twelve hours in any workday and for all hours worked in
28 excess of eight hours on the seventh consecutive day of work in a workweek.

1 51) California law requires an employer to pay its employees for all hours worked, including
2 overtime. Labor Code§ 510 states that "[a]ny work in excess of eight hours in one workday and
3 any work in excess of 40 hours in any one workweek and the first eight hours worked on the
4 seventh day of work in any one workweek shall be compensated at the rate of no less than one
5 and one-half times the regular rate of pay for an employee." Labor Code§ 1194 states that "any
6 employee receiving less than the ... legal overtime compensation applicable to the employee is
7 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
8 or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
9 suit."

10 52) Defendants maintained a practice of paying Plaintiff without regard to the number of hours
11 actually worked by refusing to pay Plaintiffs wages for the hours Plaintiff worked in excess of
12 eight hours per workday and for the time she was entitled to take for rest periods and meal periods
13 which were missed and/or non-compliant as set forth herein.

14 53) Specifically , Defendants had a syste m whereby employees would clock in and clock out
15 using a cell phone. However, Defendants would complain when employees, including Plaintiff,
16 would clock hours that required the payment of overtime. Defendants would complain to Plaintiff
17 about her overtime so often that Plaintiff felt recording her overtime would cost Plaintiff her job.
18 As a result, Plaintiff stopped recordin g her hours worked in excess of eight hours because it was
19 not worth the risk of losing her job. Additionally, Defendants would often send Plaintiff to a
20 patient's reside nce just before Pla intiff s eight-hour day was finished, sometimes a half hour
21 before Plaintiffs day was done. Defendant s did this knowing full well that Plaintiffs driving time
22 and adminis tratio n of aid would result in Plaintiff working an excess of eight hours for the day.
23 Despite this, Defendants did not pay Plaintiff for Plaintiffs hours worked in excess of eight hours.

24 54) Because of Defendants' failur es as alleged herein , Plaintiff did not receive compensation
25 for all hours actually worked for Defendants and did not receive all of the overtime to which she
26 was entitled, and Plaintiff is entitle d to receive that compensation in an amount to be proven at
27 trial.

28 55) By violating IWC Wage Order No. 4-2001 § 3 and Labor Code§ 510, Defendants are also

liable for reasonable attorney' s fees and costs pursuant to Labor Code§ 1194.

2
3 **SIXTH CAUSE OF ACTION FOR WAITING TIME PENALTIES**
4 **IN VIOLATION OF LABOR CODE§§ 201 AND 203 AGAINST**
5 **ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

6 56) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
7 paragraphs as though fully set forth herein.

8 57) Labor Code § 201 states that "[i]f an employer discharges an employee, the wages earned
9 and unpaid at the time of discharge are due and payable immediately." Labor Code§ 203 provides
10 that "[i]f an employer willfully fails to pay, without abatement or reduction ... any wages of an
11 employee who is discharged, ... the wages of the employee shall continue as a penalty from the
12 due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
13 shall not continue for more than 30 days."

14 58) Defendants terminated Plaintiffs employment without paying Plaintiff the meal period
15 wages, rest period wages, overtime wages, or reimbursement for business expenses that were due
16 to Plaintiff within the time required by Labor Code§ 201. Defendants' failure to pay these wages
17 has been and continues to be willful.

18 59) As a result of Defendants' conduct, Plaintiff is entitled to waiting time penalties in the
19 amount of up to thirty days' wages under Labor Code § 203, together with interest thereon and
20 reasonable attorney's fees and costs.

21
22 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE**
23 **ITEMIZED STATEMENTS IN VIOLATION OF LABOR CODE§ 226**
24 **AGAINST ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

25 60) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
26 paragraphs as though fully set forth herein.

27 61) Labor Code § 226(a) requires an employer to furnish its employees with an accurate
28 itemized statement in writing showing , among other things, total hours worked, all applicable

hourly rates during the pay period, and the corresponding number of hours worked at each rate
2 by the employee.

3 62) Under Labor Code § 226(e), an employee suffering injury as a result of a knowing and
4 intentional failure by an employer to comply with § 226(a) is entitled to recover the greater of all
5 actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for each
6 violation in a subsequent pay period, up to a maximum amount of \$4,000.

7 63) Defendants have at all relevant times been required to provide Plaintiff with regular
8 itemized written statements showing, among other things, total hours worked, all applicable
9 hourly rates during the pay period, and the corresponding number of hours worked at each rate
10 by the employee. Defendants knowingly and intentionally failed to provide timely, accurate
11 itemized wage statements including this required information.

12 64) As alleged herein, Defendants failed to include the total hours worked by Plaintiff, all
13 applicable hourly rates, and the corresponding number of hours worked at each rate by Plaintiff
14 in Plaintiff's itemized written statements. Thus, Defendants are in violation of Labor Code § 226.

15 65) As a direct and proximate result of Defendants' conduct, Plaintiff has been injured by,
16 among other things, not being paid all wages due, not knowing how many hours she worked and
17 at what rates, and being required to file this action to recover her wages and determine the amount
18 of hours worked and wages due. Plaintiff is entitled to recover the damages or penalties provided
19 by Labor Code § 226(e), including interest thereon, and reasonable attorney's fees and costs.

20
21 **EIGHTH CAUSE OF ACTION FOR FAILURE TO ALLOW PLAINTIFF TO INSPECT**
22 **OR COPY HER EMPLOYMENT RECORDS IN VIOLATION OF LABOR CODE**
23 **§§ 226(b) - (c) AGAINST ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

24 66) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
25 paragraphs as though fully set forth herein.

26 67) Labor Code § 226(6) requires an employer to "afford current and former employees the
27 right to inspect or copy records pertaining to their employment, upon reasonable request to the
28 employer." Labor Code § 226(c) further states that "[a]n employer who receives a written or oral

1 request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former
2 employee shall comply with the request as soon as practicable, but no later than 21 calendar days
3 from the date of the request. A violation of this subdivision is an infraction." Per Labor Code §
4 226(f), an employer who fails "to permit a current or former employee to inspect or copy records
5 within the time set forth in subdivision (c) entitles the current or former employee or the Labor
6 Commissioner to recover a seven-hundred-fifty dollar (\$750) penalty from the employer."

7 68) On March 08, 2018, Plaintiffs representatives sent Defendants a written letter requesting,
8 among other things, a copy of Plaintiffs payroll records. This letter was addressed to Defendant
9 Seasons Hospice and sent via certified mail to Defendant Seasons Hospice's place of business as
10 listed with the California Secretary of State (8686 Haven Ave., Suite 300, Rancho Cucamonga,
11 CA 91730).

12 69) As alleged herein, Plaintiff is a former employee of Defendant Seasons Hospice who sent
13 a written request for a copy of her payroll records. As of April 10, 2018, Defendant Seasons
14 Hospice has failed to provide Plaintiff the ability to inspect her records. Thus, Defendants are in
15 violation of Labor Code §§ 226(b) - (c).

16 70) As such, Plaintiff is entitled to receive, and Defendants are required to pay, a penalty of
17 \$750 as provided by Labor Code § 226(f).

18
19 **NINTH CAUSE OF ACTION FOR FAILURE TO MAKE PLAINTIFF PERSONNEL**
20 **RECORD AVAILABLE IN VIOLATION OF CALIFORNIA LABOR CODE §**
21 **1198.5(b)(1) AGAINST ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

22 71) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
23 paragraphs as though fully set forth herein.

24 72) Labor Code § 1198.5(b)(1) requires an employer to "make the contents of those personnel
25 records available for inspection to the current or former employee, or his or her representative, at
26 reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the
27 employer receives a written request." Per Labor Code § 1198.5(k), an employer who fails "to
28 permit a current or former employee, or his or her representative, to inspect or copy personnel

1 records the times specified in this section, . . . the current or former employee or the Labor
2 Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer."

3 73) On March 08, 2018, Plaintiffs representatives sent Defendants a written letter requesting,
4 among other things, a copy of Plaintiffs personnel records. This letter was addressed to
5 Defendant Seasons Hospice and sent via certified mail to Defendant Seasons Hospice's place of
6 business as listed with the California Secretary of State (8686 Haven Ave., Suite 300, Rancho
7 Cucamonga, CA 91730).

8 74) As alleged herein, Plaintiff is a former employee of Defendant Seasons Hospice who sent
9 a written request for a copy of her personnel records. As of April 10, 2018, Defendant Seasons
10 Hospice has failed to provide Plaintiff with the requested personnel records. Thus, Defendants
11 are in violation of Labor Code § 1198.5(b)(1).

12 75) As such, Plaintiff is entitled to receive, and Defendants are required to pay, a penalty of
13 \$750 as provided by Labor Code § 1198.5(k).

14
15 **TENTH CAUSE OF ACTION FOR REIMBURSEMENT OF BUSINESS EXPENSES**
16 **AGAINST ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

17 76. Plaintiff restates and incorporates by reference each and every allegation of the foregoing
18 paragraphs as though fully set forth herein.

19 77. Labor Code § 2802(a) requires "[a]n employer to indemnify his or her employee for all
20 necessary expenditures or losses incurred by the employee in direct consequence of his or her
21 duties." Labor Code § 2802(b) states that "all awards made by a court ... for reimbursement of
22 necessary expenditures under this section shall carry interest at the same rate as judgments in civil
23 actions. Interest shall accrue from the date on which the employee incurred the necessary
24 expenditure or loss." Labor Code § 2802(c) defines the term "necessary expenditure or losses" to
25 "include all reasonable costs, including but not limited to, attorney's fees incurred by the
26 employee enforcing the rights granted by this section."

27 78. While acting on the direct instruction of Defendants and discharging her duties for them,
28 Plaintiff incurred work-related expenses. Such expenses include, but are not limited to, the costs

1 of fuel, maintenance, and other vehicle operating costs. Plaintiff necessarily incurred these
2 substantial expenses and losses as a direct result of performing her job duties for Defendants
3 because part of Plaintiff's job duties included driving to and from patients at the patient's
4 residence.

5 79. Defendants have failed to indemnify or in any manner reimburse Plaintiff for these
6 expenditures and losses. By requiring Plaintiff to pay expenses and cover losses she incurred in
7 direct consequence of the discharge of her duties for Defendants and/or in obedience to
8 Defendants' direction, Defendants have violated and continue to violate Labor Code § 2802.

9 80. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered substantial
10 losses according to proof, as well as pre-judgment interest, costs, and reasonable attorney's fees.

11
12 **ELEVENTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN**
13 **VIOLATION OF BUSINESS AND PROFESSIONS CODES 17200 ET SEQ.**
14 **AGAINST ALL ENTITY DEFENDANTS AND DOES 1 THROUGH 100**

15 81) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
16 paragraphs as though fully set forth herein.

17 82) Plaintiff, on her own behalf, on behalf of the general public, and on behalf of others
18 similarly situated, bring this claim pursuant to Business and Professions Code § 17200 *et seq.*
19 Defendants' conduct as alleged in this Complaint has been and continues to be unfair, unlawful,
20 and harmful to Plaintiffs, the general public, and those similarly situated. Plaintiff seeks to enforce
21 important rights affecting the public interest within the meaning of Cal. Code Civ. P. § 1021.5.

22 83) Plaintiff is a "person" within the meaning of Bus. & Prof. Code § 17201 and therefore has
23 standing to bring this cause of action pursuant to Bus. & Prof. Code § 17204 for injunctive relief,
24 restitution, and other appropriate equitable relief.

25 84) Bus. & Prof. Code § 17200 *et seq.* provides that "unfair competition shall mean and
26 include any unlawful, unfair or fraudulent business act or practice."

27 85) Wage and hour laws express fundamental public policies. The prompt payment of
28 overtime pay and other legally required wages and benefits is a fundamental public policy of this

State. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower their costs by failing to comply with minimum labor standards.

86) Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, including but not limited to, Sections 201, 203, 226, 226.7, 510, 512, 1102.5, and 1194, and have engaged in other unlawful and unfair business practices in violation of Bus. & Prof. Code § 17200 *et seq.* depriving Plaintiff, all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under the law.

87) Defendants' unlawful and unfair conduct, as alleged above, constitutes unfair competition in violation of Bus. & Prof. Code § 17200.

88) Defendants, by engaging in the conduct herein alleged, violated Bus. & Prof. Code § 1517200.

89) Business & Professions Code § 17204 provides for a private cause of action, stating that "[a]ctions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction . . . upon the complaint of any board, officer, person, corporation or association or by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition."

90) Business & Professions Code § 17203 provides the court with available remedies, stating that "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments . . . as may be necessary to restore to any person in interest any money or property . . . which may have been acquired by means of such unfair competition."

91) The unlawful and unfair business practices of Defendants described herein present a continuing threat to members of the public in that Defendants continue to engage in the conduct described herein.

1 92) Defendants have wrongfully retained monies belonging to Plaintiff that it may have
2 acquired by means of unfair and unlawful business practices.

3 93) Unless restrained by this Court, Defendants will continue to engage in the unlawful
4 conduct as alleged above. Pursuant to the Business and Professions Code, this Court should make
5 such orders or judgments as may be necessary to prevent the use or employment, by Defendants ,
6 its agents or employees, of any unlawful or deceptive practice prohibited by the Business &
7 Professions Code, and/or, including but not limited to, disgorgement of profits which may be
8 necessary to restore to Plaintiff the money Defendants have unlawfully failed to pay.

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15 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them,
16 as follows:

- 17 1) For general and special damages according to proof;
18 2) For pre-judgment interest to the extent allowed by law;
19 3) For costs of suit incurred herein;
20 4) For attorney's fees; and
21 5) For such other and further relief as the Court deems just and proper.
22

23 DATED: April 13, 2018

Jafari Law Group

24 By: *J-J!*
25 David V. Jafari, Esq.
26 Saul Acherman, Esq.
27 Griffin Schindler , Esq.

28 Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

DATED: April 13, 2018

Jafari Law Group

By *JL*
David V. Jafari, Esq.
Saul Acherman, Esq.
Griffin Schindler, Esq.

Attorneys for Plaintiff

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