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18 BROOKDALE SENIOR LIVING
19 COMMUNITIES, INC.

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA

22 MELANIE WALTHER, EVELYN
23 GARICA, individuals on behalf of
24 themselves and all similarly situated
25 persons and the general public,

26 Plaintiffs,

27 v.

28 BROOKDALE SENIOR LIVING
COMMUNITIES, INC., a California
Corporation, and DOES 1-50,

Defendants.

Case No. 2:20-cv-10124

**DEFENDANT BROOKDALE
SENIOR LIVING COMMUNITIES,
INC.'S NOTICE OF REMOVAL OF
ACTION TO FEDERAL COURT
PURSUANT TO 28 U.S.C. SECTION
1332(D)(2) (CAFA)**

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFFS MELANIE**
3 **WALTHER AND EVELYN GARCIA, AND THEIR ATTORNEYS OF**
4 **RECORD:**

5 PLEASE TAKE NOTICE that Defendant BROOKDALE SENIOR LIVING
6 COMMUNITIES, INC. (hereinafter “Defendant”) hereby removes the above-entitled
7 action brought by Plaintiffs MELANIE WALTHER AND EVELYN GARCIA
8 (“Plaintiffs”) in the Superior Court of the State of California, County of Orange, to the
9 United States District Court for the Central District of California, pursuant to 28
10 U.S.C. §§ 1332(d) (Class Action Fairness Act of 2005) and 1446 on the following
11 grounds:

12 **I. STATEMENT OF JURISDICTION**

13 1. This Court has original jurisdiction over this action pursuant to the Class
14 Action Fairness Act of 2005 (“CAFA”), which vests the United States District Courts
15 with original jurisdiction of any civil action: (a) that is a class action with a putative
16 class of more than a hundred members; (b) in which any member of a class of plaintiffs
17 is a citizen of a State different from any defendant; and (c) in which the matter in
18 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. *See*
19 28 U.S.C. §1332(d). CAFA authorizes removal of such actions in accordance with
20 United States Code, title 28, section 1446. As set forth below, this case meets all of
21 CAFA’s requirements for removal and is timely and properly removed by the filing of
22 this Notice.

23 **II. VENUE**

24 2. Venue lies in the Central District of California pursuant to 28 U.S.C. §§
25 84(c), 1441(a), and 1446(a). Plaintiffs originally brought this Action in the Superior
26 Court of the State of California, County of Orange.

1 **III. PLEADINGS, PROCESS, AND ORDERS**

2 3. On May 26, 2020, Plaintiffs filed a Class Action Complaint against
3 Defendant¹ and various DOE defendants in Orange County Superior Court: *MELANIE*
4 *WALTHER, EVELYN GARCIA, individuals on behalf of themselves and all similarly*
5 *situated persons, and the general public vs. BROOKDALE SENIOR LIVING*
6 *COMMUNITIES, INC., a California Corporation; and DOES 1 through 50, Case No.*
7 *30-2020-01140688-CU-OE-CXC* (hereinafter, the “Complaint”). The Complaint
8 asserts the following causes of action: (1) Unpaid Missed Rest Breaks (Labor Code §
9 226.7 and IWC Wage Order No. 5-2001 § 12); (2) Unpaid Missed Meal Breaks (Labor
10 Code § § 226.7 and 512); (3) Failure to Pay All Overtime Worked (Labor Code § § 510
11 and 1194); (4) Failure to Pay Minimum Wage and Pay for All Wages Earned (Labor
12 Code § § 204, 1194 and 1197); (5) Failure to Maintain Accurate Pay Records (Labor
13 Code § § 226(a) and 1174); (6) Failure to Pay Wages Upon Separation (Labor Code §
14 § 201-203); (7) Failure to Pay Sick Days (Labor Code § 246(a)); and (9) Violation of
15 California Business & Professions Code §§17200, *et seq.*. A summons also was issued
16 on May 26, 2020.

17 4. On July 30, 2020, Defendant filed a Joint Stipulation and [Proposed] Order
18 to Stay Action and Proceed with Final and Binding Arbitration on an Individual Basis.
19 A true and correct copy of the July 30, 2020 Joint Stipulation and Proposed Order is
20 attached as **Exhibit A** to the Declaration of Shannon Boyce In Support of Defendant’s
21 Notice of Removal (“Boyce Decl.”), filed concurrently herewith. Boyce Decl. ¶ 3.

22 5. On August 20, 2020, Defendant filed a Joint Stipulation, Request and
23 [Proposed] Order to Continue Case Management Conference of August 24, 2016. A
24 true and accurate copy of the August 20, 2020 Joint Stipulation, Request and [Proposed]
25 Order is attached as **Exhibit B** to the Declaration of Shannon Boyce In Support of
26

27 ¹ Defendant Brookdale Senior Living Communities, Inc. did not employ Plaintiffs.
28 Rather, Plaintiffs were employed by BKD Twenty-One Management Company, Inc.
Both entities are subsidiaries of Brookdale Senior Living, Inc.

1 Defendant's Notice of Removal, filed concurrently herewith. Boyce Decl. ¶ 4.

2 6. On August 20, 2020, the Court ordered that the August 24, 2020 Case
3 Management Conference be continued to October 24, 2020. A true and accurate copy
4 of the August 20, 2020 Order is attached as **Exhibit C** to the Declaration of Shannon
5 Boyce In Support of Defendant's Notice of Removal, filed concurrently herewith.
6 Boyce Decl. ¶ 5.

7 7. On October 5, 2020, Plaintiffs served Defendant Brookdale Senior Living
8 Communities, Inc. with a copy of the Complaint, a Summons, Civil Case Cover Sheet,
9 and a Notice of Hearing. A true and correct copy of the Complaint and the
10 accompanying documents served on Defendant Brookdale Senior Living Communities,
11 Inc. is attached as **Exhibit D** to the Declaration of Shannon Boyce In Support of
12 Defendant's Notice of Removal, filed concurrently herewith. Boyce Decl. ¶ 6.

13 8. Plaintiff Melanie Walther filed Proof of Service on Defendant on October
14 13, 2020. A true and correct copy of this proof of service is attached hereto as **Exhibit**
15 **E** to the Declaration of Shannon Boyce In Support of Defendant's Notice of Removal,
16 filed concurrently herewith. Boyce Decl. ¶ 7.

17 9. Plaintiff Evelyn Garcia filed a Proof of Service on Defendant on October
18 19, 2020. A true and correct copy of this proof of service is attached hereto as **Exhibit**
19 **F** to the Declaration of Shannon Boyce In Support of Defendant's Notice of Removal,
20 filed concurrently herewith. Boyce Decl. ¶ 8.

21 10. Defendant filed its Answer in State Court on November 4, 2020. A true
22 and correct copy of the State Court Answer is attached hereto as **Exhibit G** to the
23 Declaration of Shannon Boyce In Support of Defendant's Notice of Removal, filed
24 concurrently herewith. Boyce Decl. ¶ 9.

25 **IV. TIMELINESS OF REMOVAL**

26 11. This Notice of Removal is timely filed within thirty days of October 5,
27 2020, the date of service of the Summons and Complaint on Defendant, and within one
28 year from the commencement of this action. *See* 28 U.S.C. § 1446(b).

1 **V. CAFA JURISDICTION**

2 12. CAFA grants United States district courts original jurisdiction over:
3 (a) civil class action lawsuits filed under federal or state law; (b) where the alleged class
4 is comprised of at least 100 individuals; (c) in which any member of a class of plaintiffs
5 is a citizen of a state different from any defendant; and (d) where the matter's amount
6 in controversy exceeds \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C.
7 § 1332(D). CAFA authorizes removal of such actions in accordance with 28 U.S.C.
8 § 1446. As set forth below, this case meets each of the CAFA requirements for
9 removal, and is timely and properly removed by the filing of this Notice of Removal.

10 **A. Plaintiffs Filed a Class Action Under State Law.**

11 13. Plaintiffs filed their action as a class action based on alleged violations of
12 California state law.

13 **B. The Proposed Class Contains at Least 100 Members.**

14 14. 28 U.S.C. § 1332(d)(5)(B) states that the provisions of CAFA do not apply
15 to any class action where “the number of members of all proposed plaintiff classes in
16 the aggregate is less than 100.”

17 15. Plaintiffs filed their action on behalf of themselves and “[a]ll persons who
18 were employed at BROOKDALE SENIOR LIVING COMMUNITIES, INC., in the
19 State of California during the period commencing four years from the date of PAGA
20 filing [sic], April 29, 2020, through the entry of final judgment in this action.”
21 Complaint, ¶ 26.

22 16. Based on a review of Defendant's records, BKD Twenty-One
23 Management Company, Inc., the entity which actually employed Plaintiffs, employed
24 approximately 4,041 current and former employees in California between May 26, 2016
25 and present, which represents the four year class period based on the date Plaintiffs filed
26 their Complaint. Declaration of Brenda O'Keefe (“O'Keefe Decl.”), ¶ 3. Accordingly,
27 Defendant's internal records demonstrate that there are well over 100 putative class
28 members in this case.

1 **C. Defendant Is Not A Government Entity.**

2 17. Under 28 U.S.C. § 1332(d)(5)(B), CAFA does not apply to class actions
3 where the “primary defendants are States, State officials, or other governmental entities
4 against whom the district court may be foreclosed from ordering relief.”

5 18. Neither Defendant, nor Plaintiffs’ actual employer of record, BKD
6 Twenty-One Management Company, Inc., are a state, state official, or other
7 governmental entity. Declaration of Audrey Withers (“Withers Decl.”), ¶ 3-4, *filed*
8 *concurrently herewith*.

9 **D. Plaintiffs’ Citizenship is Diverse From Defendant’s Citizenship.**

10 19. “Under CAFA, complete diversity is not required; ‘minimal diversity’
11 suffices.” *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007). CAFA’s
12 minimal diversity requirement is satisfied, *inter alia*, when “any member of a class of
13 plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. §§
14 1332(d)(2)(A); 14523(b). Minimal diversity of citizenship exists here because Plaintiffs
15 and Defendant are citizens of different states.

16 20. **Plaintiffs are citizens of California.** For diversity purposes, a person is a
17 “citizen” of the state in which he or she is domiciled. *See Kantor v. Wellesley Galleries,*
18 *Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983); *see also LeBlanc v. Cleveland*, 248 F.3d 95,
19 100 (2d Cir. 2001) (citizenship determined at the time the lawsuit is filed); *see also*
20 *Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991). A person’s
21 domicile is the place he or she resides with the intention to remain, or to which he or
22 she intends to return. *See Kanter v. Warner–Lambert Co.*, 265 F.3d 853, 857 (9th Cir.
23 2001). A plaintiff’s place of residence provides prima facie evidence of domicile. *Smith*
24 *v. Simmons*, 2008 U.S. Dist. LEXIS 21162, *22 (E.D. Cal. 2008). At the time Plaintiffs
25 commenced this action and, upon information and belief, at the time of removal,
26 Plaintiffs resided in the State of California. *See Complaint*, ¶¶ 5-6 (“Plaintiff,
27 MELANIE WALTHER is a resident of California...Plaintiff, EVELYN GARCIA is a
28 resident of California”). Indeed, at all times relevant to this action, Plaintiffs maintained

1 a California address with the Company. Withers Decl., ¶¶ 5-6. Therefore, Plaintiffs
2 are citizens of California.

3 **21. Defendant Is Not A Citizen Of California.**

4 **a. Neither Brookdale Senior Living Communities, Inc. Nor**
5 **Plaintiffs' Actual Employer Is A Citizen Of California.**

6 22. For diversity purposes, a corporation “shall be deemed a citizen of any
7 State by which it has been incorporated and of the State where it has its principal place
8 of business.” 28 U.S.C. §§ 1332(c)(1). The United States Supreme Court resolved that,
9 for purposes of federal diversity jurisdiction, the “nerve center” test should be applied
10 to determine a corporation’s principal place of business. *Hertz Corp. v. Friend*, 130 S.
11 Ct. 1180, 1192-93 (2010). Under the “nerve center” test, a corporation’s principal place
12 of business is where its “high level officers direct, control, and coordinate the
13 corporation’s activities.” *Id.* at 1192.

14 23. Defendant Brookdale Senior Living Communities, Inc., as well as
15 Plaintiffs’ actual employer BKD Twenty-One Management Company, Inc., were at the
16 time of filing this action, and remain, corporations incorporated under the laws of
17 Delaware with their principal place of business at 111 Westwood Place, Suite 400,
18 Brentwood, Tennessee 37027. Withers Decl., ¶¶ 7-8. Brookdale Senior Living
19 Communities, Inc.’s and BKD Twenty-One Management Company, Inc.’s corporate
20 headquarters are located in Tennessee. Indeed, a majority of Brookdale and BKD’s
21 executive and administrative functions are located in Tennessee. Final decisions
22 regarding the following corporate-wide issues relating to operations are made from
23 Brookdale Senior Living Communities, Inc.’s and BKD Twenty-One Management
24 Company, Inc.’s corporate headquarters and principal place of business in Brentwood,
25 Tennessee: decisions regarding corporate policy; decisions regarding the purchase,
26 financing and leasing of real properties; legal decisions; significant decisions regarding
27 contracts and other purchasing; decisions regarding Brookdale press releases and public
28 affairs; decisions regarding revenue management; and policy decisions regarding

1 advertising and marketing. Withers Decl., ¶¶ 9-10. Thus, Brookdale Senior Living
2 Communities, Inc.’s and BKD Twenty-One Management Company, Inc.’s principal
3 place of business is in the State of Tennessee, and therefore Brookdale Senior Living
4 Communities, Inc. and BKD Twenty-One Management Company, Inc. are citizens of
5 the State of Tennessee for the purpose of determining diversity of citizenship.

6 24. Accordingly, the named Plaintiffs are citizens of a state different from
7 Defendant, and diversity exists for purposes of CAFA jurisdiction. *See* 28 U.S.C. §§
8 1332(d)(2)(A).

9 **D. The Amount in Controversy Exceeds \$5,000,000.²**

10 25. CAFA authorizes the removal of class actions in which the amount in
11 controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

12 26. The removal statute requires that a defendant seeking to remove a case to
13 federal court must file a notice “containing a short and plain statement of the grounds
14 for removal.” 28 U.S.C. § 1446(a). The Supreme Court, in *Dart Cherokee Basin*
15 *Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014), recently recognized that “as
16 specified in § 1446(a), a defendant’s notice of removal need include only a plausible
17 allegation that the amount in controversy exceeds the jurisdictional threshold.” Only if
18 the plaintiff contests or the court questions the allegations of the notice of removal is
19 supporting evidence required. *Id.* Otherwise “the defendant’s amount-in-controversy
20 allegation should be accepted” just as a plaintiff’s amount-in-controversy allegation is
21 accepted when a plaintiff invokes federal court jurisdiction. *Id.* at 553.

22 27. Here, Plaintiffs do not allege the amount in controversy in the Complaint.
23 Yet, the face of the Complaint clearly demonstrates the amount in controversy exceeds
24 \$5,000,000.

25 28. Plaintiffs’ Eighth Cause of Action alleges violation of the Unfair
26

27 ² The alleged damages calculations contained herein are for purposes of removal only.
28 Defendant denies that Plaintiffs are entitled to any relief whatsoever and expressly reserves the right to challenge Plaintiffs’ alleged damages in this case.

1 Competition Law (“UCL”), Business and Professions Code §§ 17200, *et seq.*
2 Complaint, ¶¶ 73-86. Alleging a UCL violation extends the statute of limitations on
3 Plaintiffs’ wage and hour claims from three to four years from the filing of the
4 Complaint, or going back to May 26, 2016. *See* Cal. Bus. & Prof. Code § 17208; *Cortez*
5 *v. Purolater Air Filtration Products Co.*, 23 Ca. 4th 163, 178-79 (200) (four-year statute
6 of limitations for restitution of wages under the UCL).

7 **Amount in Controversy – Rest Period Claim.**

8 29. In their First Cause of Action, Plaintiffs allege that Plaintiffs “were not
9 allowed to take paid uninterrupted rest breaks that they [were] legally entitled to
10 pursuant to pertinent IWC Wage Order[s] such as No. 5-2001 section 12.” Complaint,
11 ¶ 36.

12 30. Plaintiffs seek to recover one additional hour of pay at the regular rate of
13 compensation for each work day that a rest period was not provided, for a four-year
14 period dating back from the date of the commencement of this action. Complaint, ¶ 38.
15 Moreover, despite the fact that rest breaks are paid time and any alleged premiums owed
16 do not constitute wages, Plaintiffs asserts that they “are entitled to fifty dollars (\$50.00)
17 for each pay period for which they were underpaid, in addition to an amount sufficient
18 to recover underpaid wages and for each subsequent violation, one hundred dollars
19 (\$100.00) for each pay period for which they were underpaid in addition to an amount
20 sufficient to recover underpaid wages.” Complaint, ¶ 39.

21 31. California law permits recovery of one additional hour of pay at the
22 employee’s regular rate of compensation for each workday a rest period was not
23 provided. Cal. Lab. Code § 226.7. The statutory period for recovery for a California
24 Labor Code section 226.7 claim pursued with a Business & Professions Code claim is
25 four years. *See* Cal. Civ. Proc. Code § 338(A).

26
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28

1 32. Based on the available employment records, there are approximately 4,041
2 putative class members at issue for Plaintiffs’ missed rest period claims with 268,927
3 workweeks in the alleged class period. O’Keefe Decl., ¶ 3, *filed concurrently herewith*.
4 The average hourly rate, over the four year alleged class period, for the purported class
5 members Plaintiffs seek to represent is \$17.52. O’Keefe Decl., ¶ 7. While Defendant
6 denies the validity and merit of Plaintiffs’ missed rest period claim, for purposes of
7 removal only, Defendant calculates that based on the hourly rates of pay for the putative
8 class members and assuming just one missed rest period per week, the amount in
9 controversy for Plaintiffs’ missed rest period claim is **\$4,711,601** (1 missed rest
10 period/week x 1 hour rest break premium x \$17.52 average hourly rate x 268,927
11 workweeks). *Franke v. Anderson Merch. LLC*, 2017 WL 3224656, at *3 (C.D. Cal. Jul.
12 28, 2017) (finding defendant had “proven the meal and rest break premium amounts by
13 a preponderance of the evidence” where defendant assumed “an employee missed five
14 meal or rest breaks for every bi-weekly pay period — or a 50% rate — in which the
15 employee averaged a workday lasting at least five or three-and-a-half hours,
16 respectively” and the plaintiff provided only broad allegations of meal and rest break
17 violations); *Crummie v. CertifiedSafety, Inc.*, 2017 WL 4544747, at *3 (N.D. Cal. Oct.
18 11, 2017) (explaining a defendant is entitled to make reasonable assumptions in
19 establishing amount in controversy)

20 **Amount in Controversy – Meal Period Claim**

21 33. In their Second Cause of Action, Plaintiffs allege “Defendants fostered a
22 work environment where the taking of uninterrupted thirty (30) minute meal breaks by
23 its employees was essentially prohibited....Plaintiffs and Class members could not take
24 any thirty (30) minute uninterrupted meal breaks without risk of being reprimanded or
25 terminated.” Complaint, ¶ 46.

26 34. Plaintiffs seek to recover “on hour of additional pay at the regular rate of
27 compensation for each workday that the proper meal periods were not provided.”
28 Complaint, ¶ 47.

1 35. California law permits recovery of one additional hour of pay at the
2 employee's regular rate of compensation for each workday a meal period was not
3 provided. Cal. Lab. Code § 226.7. The statutory period for recovery for a California
4 Labor Code section 226.7 claim pursued with a Business & Professions Code claim is
5 four years. See Cal. Civ. Proc. Code § 338(A) (setting out a three-year limitations
6 period); Cal. Bus. & Prof. Code § 17208 (explaining the three-year statute of limitations
7 can be extended to four years through the pleading of a companion claim under the
8 UCL).

9 36. Plaintiffs have not placed any limits on their meal period claim. As such,
10 at this juncture, every meal break for every putative class member during the putative
11 class period is in controversy.

12 37. While Defendant denies the validity and merit of Plaintiffs' missed meal
13 period claim, for purposes of removal only, Defendant calculates that based on the
14 hourly rates of pay for the putative class members and assuming just one missed meal
15 period per week, the amount in controversy for Plaintiffs' missed meal period claim is
16 **\$4,711,601** (1 missed meal period/week x 1 hour meal premium x \$17.52 average
17 hourly rate x 268,927 workweeks). *Lucas v. Michael Kors (USA) Inc.*, 2018 WL
18 2146403, at *4 (C.D. Cal. May 9, 2018) (assumed violation rate of 2 missed meal/rest
19 breaks per workweek was reasonable in light of complaint allegation that defendant had
20 a "consistent policy"); *Crummie, supra*, 2017 WL 4544747, at *3 (finding defendant's
21 estimate when it "conservatively assumed that putative class members . . . missed meal
22 and rest breaks only every other shift" even though plaintiff's complaint "was replete
23 with verbiage suggesting that the alleged violations were pervasive, wide-spread, and
24 ongoing"); *Franke, supra*, 2017 WL 3224656, at *3) (assuming a 50% meal break
25 violation rate is reasonable).

1 **Amount in Controversy – Failure to Pay Overtime**

2 38. In their Third Cause of Action, Plaintiffs allege that Defendant failed to
3 compensate Plaintiffs and class members for overtime hours worked. Complaint, ¶ 55.

4 39. Labor Code Section 510 requires employers to pay nonexempt employees
5 one-and-one-half times their regular rate for all hours worked over eight in a day or 40
6 in a week. Additionally, nonexempt employees must be paid one-and-one-half times
7 their regular rate for the first eight hours worked on the seventh day worked in a single
8 workweek. Employers must also pay double time for all hours worked over 12 in a day,
9 and for all hours worked in excess of eight on the seventh consecutive day of work in a
10 single workweek. Cal. Lab. Code § 510. The statutory period for recovery under
11 California Labor Code section 510 is calculated under a 4-year statute of limitations
12 when recovery is sought under the UCL. *See* Cal. Civ. Proc. Code § 338(a) (setting a
13 three-year period); Cal. Bus. & Prof. Code § 17208 (the three-year statute of limitations
14 can be extended to four years through the pleading of a companion claim under the
15 UCL).

16 40. While Defendant denies the validity and merit of Plaintiffs’ overtime
17 claims, for purposes of removal only, Defendant calculates that estimating just one hour
18 of overtime per week per putative class member for the class period results in an
19 additional **\$7,067,402** in controversy (1 OT hour/week x 1.5 average hourly rate x
20 268,927 workweeks).

21 **Amount in Controversy-Failure to Pay All Wages**

22 41. In the Fourth Cause of Action, Plaintiffs allege that Defendant failed to
23 pay Plaintiffs and putative class members wages for all hours worked, “including, but
24 not limited to, the hours worked during their meal and rest breaks, as well as overtime
25 pay, and for which they did not receive the proper compensation under the law.”
26 Complaint, ¶ 59.

27 42. The statute of limitations for minimum and unpaid wage claims is three
28 years under California Code of Civil Procedure 338(a), but is extended to four years by

1 way of Plaintiffs’ UCL claim. While Defendant denies the validity and merit of
2 Plaintiffs’ wage claim, for purposes of removal only, Defendant calculates that
3 estimating just one hour per week at the average hourly rate puts an additional
4 **\$4,711,601** at issue (1 unpaid hour/week x 4 year average minimum wage x 268,927
5 workweeks).

6 **Amount in Controversy – Failure to Maintain Accurate Payroll**
7 **Records**

8 43. In their Fifth Cause of Action, Plaintiffs allege that Defendant failed to
9 maintain payroll records “by willfully failing to keep requirement payroll records
10 showing the actual hours worked each day by Plaintiffs and Class Members.”
11 Complaint, ¶ 63.

12 44. Plaintiffs seek to recover all available statutory penalties plus costs,
13 expenses and reasonable attorneys’ fees. Complaint, Prayer for Relief.

14 45. An employee seeking to recover under California Labor Code section
15 226(e) is entitled to recover “the greater of all actual damages or fifty dollars (\$50) for
16 the initial pay period in which a violation occurs and one hundred dollars (\$100) per
17 employee for each violation in subsequent pay period, not to exceed an aggregate
18 penalty of four thousand dollars (\$4,000).” Labor Code § 226(e).

19 46. Plaintiffs’ claim for failure to maintain payroll records is governed by a
20 one-year statute of limitations. Cal. Code Civ. Proc. § 340 (one-year statute of
21 limitations governs claims for penalties).

22 47. Based on Plaintiffs’ broad and general allegations, Plaintiffs and putative
23 class members would potentially be entitled to penalties for each wage statement. The
24 total number of putative class members employed from May 26, 2019 through present
25 is 1,778. O’Keefe Decl., ¶ 6. There are 39,884 pay periods at issue. *Id.* Assuming
26 each employee during the statutory period is entitled to \$50 for the initial inaccurate
27 pay stub and a \$100 penalty thereafter per pay period, not to exceed \$4,000, the potential
28 amount in controversy for this claim is at least **\$3,899,500**.

1 **Amount in Controversy – Failure to Pay Wages Due Upon**
2 **Termination**

3 48. In their Sixth Cause of Action, Plaintiffs allege a claim for unpaid final
4 wages pursuant to California Labor Code §§ 201 and 202, which provides that wages
5 earned and unpaid at the time of discharge are due and payable immediately, and if an
6 employee voluntarily leaves his or her employment, his or her wages will become due
7 within 72 hours thereafter. Complaint, ¶ 67.

8 49. The statute of limitations for Plaintiffs’ waiting time penalty claim is three
9 years. *Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1382, 1935 (2010) (“no one disputes
10 that when an employee sues to recover both unpaid final wages and the resulting section
11 203 penalties, the suit is governed by the same three-year limitations period that would
12 apply had the employee sued to recover only the unpaid wages”).

13 50. While Defendant denies the validity and merit of Plaintiffs’ claim, for
14 purposes of removal only, Defendant determined the amount in controversy by applying
15 the maximum penalty authorized. There are approximately 2,507 nonexempt former
16 employees who were terminated in California during the three year statute of limitations
17 applicable to this claim (*i.e.* class period beginning May 26, 2017). O’Keefe Decl., ¶5.
18 Assuming an eight hour work day and the maximum thirty days allowed by statute, and
19 using the average hourly rate for the putative class members, the amount in controversy
20 on Plaintiffs’ claim for failure to timely pay all wages due at discharge is approximately
21 **\$10,541,434.**

22 **Amount in Controversy – Failure to Pay Sick Days**

23 51. In their Seventh Cause of Action, Plaintiffs allege a claim for failure to pay
24 for sick days. Complaint, ¶ 70.

25 52. Pursuant to California Labor Code §246(a), “An employee who, on or after
26 July 1, 2015, works in California for the same employer for 30 or more days within a
27 year from the commencement of employment is entitled to paid sick days as specified
28 in this section.”

53. While Defendant denies the validity and merit of Plaintiffs' sick pay claim, for purposes of removal only, Defendant determined the amount in controversy by applying the maximum penalty authorized. There are approximately 3,568 nonexempt employees who worked for 30 or more days within a year of commencement of employment in California during the four year statute of limitations applicable to this claim (*i.e.* class period beginning May 26, 2016). O'Keefe Decl., ¶ 4. Estimating the putative class members damages as one hour of unpaid sick time at the average hourly rate for each employee who worked during the relevant time period puts an additional **\$62,511** at issue (1 unpaid hour x number of qualifying employees).

Summary of Amount in Controversy

54. Plaintiffs' allegations combined with the very conservative calculations set forth above establish that the amount in controversy is at least \$35,705,650:

Claims	Amount in Controversy
Rest Period Premiums	\$4,711,601
Meal Period Premiums	\$4,711,601
Failure to Pay Overtime	\$7,067,402
Failure to Pay Minimum Wages	\$4,711,601
Wage Statement Penalties	\$3,899,500
Waiting Time Penalties	\$10,541,434
Sick Days	\$62,511
Amount in Controversy	\$35,705,650

55. Removal of this action is therefore proper as the aggregate value of Plaintiffs' class claims well exceed the CAFA jurisdictional requirement of \$5 million. *See* 28 U.S.C. § 1332(d)(2).

56. Accordingly, although Defendant denies Plaintiffs' claims as alleged in the Complaint, the jurisdictional minimum is satisfied for purposes of determining amount

1 in controversy, as it exceeds the \$5,000,000 threshold required under CAFA.

2 57. WHEREFORE, Defendant hereby removes this action from the Superior
3 Court of the State of California, County of Orange, to the United States District Court
4 for the Central District of California.

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6
7 Dated: November 4, 2020
8

9 /s/ Shannon R. Boyce
10 SHANNON R. BOYCE
11 JEFFREY J. MANN
12 LITTLER MENDELSON, P.C.
13 Attorneys for Defendant
14 BROOKDALE SENIOR LIVING
15 COMMUNITIES, INC.

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Exhibit D

Electronically Filed by Superior Court of California, County of Orange, 05/26/2020 10:19:22 AM.
30-2020-01140688-CU-OE-CXC - ROA # 4 - DAVID H. YAMASAKI, Clerk of the Court By Sarah Loose, Deputy **SUM-100**

**SUMMONS
(CITACION JUDICIAL)**

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

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

BROOKDALE SENIOR LIVING COMMUNITIES, INC.
a California Corporation, and DOES 1-50

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

MELANIE WALTHER, EVELYN GARCIA, individuals on behalf of themselves and all similarly situated persons, and the general public

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. **¡AVISO! 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 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales 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 más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé 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 podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. 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 los requisitos para obtener servicios legales gratuitos de un programa de servicios legales 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 poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más 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):

Orange County Superior Court
751 West Santa Ana Blvd., Santa Ana, CA

CASE NUMBER:
(Número del Caso):

30-2020-01140688-CU-OE-CXC

Judge William Cluster

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):
L/O OF FARRAH MIRABEL, 1070 Stradella RD, Los Angeles, CA 90077; (714) 972-0707

DATE: 05/26/2020
(Fecha)

Clerk, by
(Secretario)

DAVID H. YAMASAKI, Clerk of the Court

Amase

, Deputy
(Adjunto)

(For proof of service of this summons, use 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)). Sarah Loose



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **BROOKDALE SENIOR LIVING COMMUNITIES, INC.,
A CALIFORNIA CORPORATION.**

- under: CCP 416.10 (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)
- other (specify):

- 4. by personal delivery on (date):

10-5-2020

Electronically Filed by Superior Court of California, County of Orange, 05/26/2020 10:19:22 AM.

CM-010

30-2020-01140688-CU-DE-CXC BOA # 3 DAVID H. YAMASAKI, Clerk of the Court By Sarah Forcose, Deputy Clerk. Atorney for Plaintiff: Farrah Mirabel, Esq. (SBN: 162933) LAW OFFICES OF FARRAH MIRABEL 1070 Stradella RD Los Angeles, CA 90077; (714) 972-0707 TELEPHONE NO.: 714-972-0707 FAX NO.: 949-417-1796 ATTORNEY FOR (Name): MELANIE WALTHER, EVELYN GARCIA		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 West Santa Ana Blvd. MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Orange County Superior Court		
CASE NAME: MELANIE WALTHER, EVELYN GARCIA v. BROOKDALE SENIOR		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2020-01140688-CU-DE-CXC JUDGE: Judge William Claster DEPT: CX104

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 8 causes of action

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: APRIL 29, 2020

Farrah Mirabel, Esq.

Farrah Mirabel

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case
Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)


Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Civil Complex Center 751 W. Santa Ana Blvd Santa Ana, CA 92701	
SHORT TITLE: Walther vs. BROOKDALE SENIOR LIVING COMMUNITIES, INC.	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: 30-2020-01140688-CU-OE-CXC

I certify that I am not a party to this cause. I certify that the following document(s), dated , have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on June 24, 2020, at 2:33:09 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

LAW OFFICES OF FARRAH MIRABEL
FMESQ@FMIRABEL.COM

Clerk of the Court, by: , Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 06/24/2020

TIME: 01:38:00 PM

DEPT: CX104

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: Gus Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: 30-2020-01140688-CU-OE-CXC CASE INIT.DATE: 05/26/2020

CASE TITLE: Walther vs. **BROOKDALE SENIOR LIVING COMMUNITIES, INC.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 73327074

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factor of California Rules of Court 3.715 & 3.400: Case is complex.

Each party who has not paid the Complex fee of \$ 1,000 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

The Case Management Conference is scheduled for 08/24/2020 at 08:30 AM in Department CX104.

This case is subject to mandatory electronic filing pursuant to Superior Court Rules, County of Orange, Rule 352. Plaintiff shall give notice of the Status Conference and the electronic filing requirement to all parties of record or known to plaintiff, and shall attach a copy of this minute order.

The Court issues the attached Case Management Conference Order.

Court orders clerk to give notice.

CASE MANAGEMENT CONFERENCE ORDER

Prior to the Initial Case Management Conference, counsel for all parties are ordered to meet and confer in person (no later than 10 days before the conference) and discuss the following topics. Additionally, counsel shall be prepared to discuss these issues with this Court at the Initial Case Management Conference:

1. Parties and the addition of parties;
2. Claims and defenses;
3. Issues of law that, if considered by the Court, may simplify or foster resolution of the case.
4. Appropriate alternative dispute resolution (ADR) mechanisms (e.g., mediation, mandatory settlement conference, arbitration, mini-trial, etc.);
5. A plan for preservation of evidence;
6. A plan for disclosure and discovery;
7. Whether it is possible to plan "staged discovery" so that information needed to conduct meaningful ADR is obtained early in the case, allowing the option to complete discovery if the ADR effort is unsuccessful;
8. Whether a structure of representation such as liaison/lead counsel is appropriate for the case in light of multiple plaintiffs and/or multiple defendants;
9. Procedures for the drafting of a Case Management Order, if appropriate;
10. Any issues involving the protection of evidence and confidentiality.

Counsel for plaintiff is to take the lead in preparing a Joint Initial Case Management Conference report to be filed on or before 08-17-20.

The Joint Initial Case Management Conference Report is to include the following:

1. A list of all parties and counsel;
2. A statement as to whether additional parties are likely to be added and a proposed date by which all parties must be served;
3. An outline of the claims and cross-claims and the parties against whom each claim is asserted;
4. Service lists and procedures for efficient service filing;
5. Whether any issues of jurisdiction or venue exist that might affect this Court's ability to proceed with this case;
6. Applicability and enforceability of arbitration clauses;
7. A list of all related litigation pending in other courts, a brief description of any such litigation, and a statement as to whether any additional related litigation is anticipated;
8. A description of core factual and legal issues;
9. A description of legal issues that, if decided by the Court, may simplify or further resolution of the case;

10. Whether discovery should be conducted in phases or limited; and if so, the order of phasing or types of limitations on discovery;
11. Whether particular documents and witness information can be exchanged by agreement of the parties;
12. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
13. The usefulness of a written case management order; and
14. A target date and a time estimate for trial.

To the extent the parties are unable to agree on the matters to be addressed in the Joint Initial Case Management Conference Report, the positions of each party or of various parties shall be set forth separately. The parties are NOT to use the case management conference form for non-complex cases (Judicial Council Form CM-110).

Plaintiff shall give notice of the Case Management Conference and serve a copy of this order upon any defendants presently or subsequently served.

ATTORNEYS APPEARING AT THE CASE MANAGEMENT CONFERENCE MUST BE FULLY FAMILIAR WITH THE PLEADINGS AND THE AVAILABLE FACTUAL INFORMATION, AND MUST ALSO HAVE THE AUTHORITY TO ENTER INTO STIPULATIONS. THESE REQUIREMENTS SHALL ALSO APPLY TO ANY FUTURE STATUS CONFERENCES HELD IN THIS CASE.

The Court orders a stay on discovery until after the initial Case Management Conference is held. Notwithstanding the stay, the Court encourages the parties to engage in an informal exchange of information and documents.

Electronically Filed by Superior Court of California, County of Orange, 05/26/2020 10:19:22 AM.
30-2020-01140688-CU-OE-CXC - ROA # 2 - DAVID H. YAMASAKI, Clerk of the Court By Sarah Loose, Deputy Clerk.

1 FARRAH MIRABEL, STATE BAR NO. 162933
2 fmesq@fmirabel.com
3 **LAW OFFICES OF FARRAH MIRABEL**
4 1070 Stradella Rd.
5 Los Angeles, CA 90077
6 TELEPHONE: (714) 972-0707; Fax: (949) 417-1796

7 Attorneys for Plaintiffs, MELANIE WALTHER, EVELYN GARCIA, individuals on behalf of
8 themselves and all similarly situated persons, and the general public

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**

11 MELANIE WALTHER, EVELYN GARCIA,
12 individuals on behalf of themselves and all
13 similarly situated persons, and the general public;

14
15 Plaintiffs,

16 vs.

17
18 BROOKDALE SENIOR LIVING
19 COMMUNITIES, INC.
20 a California Corporation, and DOES 1-50,

21 Defendants.
22
23
24
25
26
27
28

Case No.: 30-2020-01140688-CU-OE-CXC
Assigned for all Purposes to: Dept: CX104
Judge William Claster

SC

**CLASS ACTION COMPLAINT
FOR DAMAGES FOR:**

1. Unpaid missed rest breaks (*Labor Code Section 226.7 and IWC Wage Order No. 5-2001 section 12*);
2. Unpaid missed meal breaks (*Labor Code Sections 226.7 and 512*);
3. Failure to pay for all overtime worked (*Labor Code Sections 510 and 1194*);
4. Failure to pay minimum wage and pay for all wages earned (*Labor Code Section 204, 1194 and 1197*);
5. Failure to maintain accurate payroll records (*Labor Code Sections 226(a) and 1174*);
6. Failure to pay wages upon separation (*Labor Code Sections 201 – 203*);
7. Failure to pay for sick days (*Lab Code §246(a)*);
8. Violation of California *Business and Professions Code §17200, et seq.*;

DEMAND FOR JURY TRIAL

1 COME NOW PLAINTIFFS, MELANIE WALTHER and EVELYN GARCIA, individually
2 and on behalf of themselves and for all similarly situated persons, and the general public, and allege as
3 follows: (The allegations in this Complaint, stated on information and belief, have evidentiary support
4 and/or are likely to have more evidentiary support after reasonable opportunity for further
5 investigation and discovery.)

6 **NATURE OF THE ACTION**

- 7 1. Defendant, BROOKDALE SENIOR LIVING COMMUNITIES, INC. is
8 operating a business in Orange County, and other counties in California.
- 9 2. During the relevant timeframe, Plaintiffs, MELANIE WALTHER and
10 EVELYN GARCIA, were employed by Defendant, BROOKDALE SENIOR
11 LIVING COMMUNITIES, INC.
- 12 3. This action for relief arises from Defendants' failure to provide off-duty rest
13 and meal periods as required by law; failure to compensate Plaintiffs and Class
14 Members at the required rate for each occasion in which Defendants failed to
15 provide rest and meal breaks; failure to pay overtime wages and for all hours
16 worked; failure to keep accurate payroll records, such that Plaintiffs and Class
17 Members were given wage statements that did not accurately reflect all the
18 hours worked and all wages earned; failure to timely pay all wages due upon
19 separation; failure to pay the minimum wage and all wages earned; and failure
20 to pay for sick days.

21 **THE PARTIES**

- 22 4. Plaintiff, MELANIE WALTHER is a resident of California.
- 23 5. Plaintiff, EVELYN GARCIA is a resident of California.
- 24 6. Defendant, BROOKDALE SENIOR LIVING COMMUNITIES, INC., at all
25 times mentioned herein, is an employer whose employees worked for
26 throughout the County of Orange and in other counties in the State of
27 California.
- 28 7. The true names and capacities, whether individual, corporate, associate or
otherwise of each of the Defendants designated herein as a DOE are unknown to

1 Plaintiffs at this time, who therefore, sue said Defendants by fictitious names,
2 DOES 1 to 50, and will ask leave of this Court for permission to amend this
3 Complaint to show their names and capacities when the same have been
4 ascertained. Plaintiffs are informed and believe and thereon allege that each of
5 the Defendants designated as a DOE is legally responsible in some manner for
6 the events and happenings herein referred to, and caused injuries and damages
7 thereby to Plaintiffs as herein alleged.

8 8. Unless otherwise individually referred to, whenever, in this Complaint,
9 reference is made to "Defendants," such reference shall refer to all Defendants.

10 9. Plaintiffs, on information and belief and based upon such basis, allege that at all
11 times herein mentioned, each of the Defendants were acting as the agent,
12 servant, employee of each of the other Defendants, within the scope of said
13 agency and employment.

14 10. During the times and places of the incident in question, Defendants, and each of
15 them, their agents, servants and employees became liable to Plaintiffs and Class
16 Members for the reasons described in the complaint herein, and thereby
17 proximately caused Plaintiffs to sustain damages as set forth herein.

18 11. Plaintiffs, on information and belief and based upon such basis, allege that all
19 Defendants carried out a joint scheme, business plan or policy in all respects
20 pertinent hereto and all acts and omissions herein complained of were
21 performed within the course and scope of said employment, service, agency,
22 common scheme, plan and/or policy.

23 12. Plaintiffs, on information and belief and based upon such basis, allege that
24 Defendants' founders, owners, shareholders, executive officers, managers, and
25 supervisors directed, authorized, ratified and/or participated in the conduct that
26 gives rise to the claims asserted herein and derived personal financial benefit
27 from such conduct at the expense of Plaintiffs.

28 **JURISDICTION AND VENUE**

13. This Court has jurisdiction over this action pursuant to California *Code of Civil
Procedure* § 410.10. The damages exceed the jurisdictional minimum of this
Court.

1 14. Venue is proper in this Court, pursuant to *California Code of Civil Procedure* §
2 395.5 because the incidents complained of occurred in Orange County,
3 California.

4 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS**

5 15. Plaintiffs are informed and believe that Defendants own, manage, and/or
6 operate BROOKDALE SENIOR LIVING COMMUNITIES, INC. a California
7 Corporation, which operates elderly living community facilities in Orange
8 County, where Plaintiffs worked.

9 16. Defendants employed Plaintiff, MELANIE WALTHER, as a non-exempt
10 hourly employee beginning in January of 2016. Plaintiff was a caregiver and
11 earned \$12.50 per hour, working various 8 hour shifts Plaintiff's last day of
12 work was December 17, 2017.

13 17. Defendants employed Plaintiff, Evelyn Garcia, as a non-exempt hourly
14 employee beginning in July 2016 until December of 2017. Plaintiff was a
15 program assistant/caregiver and earned \$16.75 per hour, working from 8:00 AM
16 – 5:00 PM on Monday through Friday.

17 18. Plaintiffs were not paid for .5 hour daily for their meal breaks despite it being
18 interrupted. In addition, Plaintiffs were not provided with rest breaks nor
19 statutory compensation for any of the missed breaks. Therefore, Plaintiffs
20 routinely worked more than eight hours per day and forty hours per week.
21 Defendants failed to pay Plaintiffs overtime wages at the legal rates of pay for
22 all overtime hours worked.

23 19. During the relevant timeframe, Plaintiffs worked shifts of over four hours, and
24 were not provided a ten-minute, uninterrupted rest break for each such shift.
25 Plaintiffs worked during the rest periods either under the direction and
26 supervision of Defendants, or with Defendants' knowledge and consent.
27 Furthermore, Defendants created schedules that made it difficult or impossible
28 for Plaintiffs to take their rest breaks.

20. During the relevant timeframe, Plaintiffs worked shifts of over five hours, and
were not given a thirty-minute, uninterrupted meal break for each such shift.

1 Plaintiffs worked during the meal periods either under the direction and
2 supervision of Defendant, or with Defendant's knowledge and consent.

3 21. Defendants failed to compensate Plaintiffs at the required rate for each occasion
4 in which Defendants failed to provide rest breaks and meal breaks.

5 22. Defendant is understaffed and cannot possibly provide its employees including
6 Plaintiffs with their statutory breaks. Furthermore, Plaintiffs claim that the past
7 and present employees did not receive an hour of premium pay, for each missed
8 break, for all days they did not receive a proper rest break and/or meal break.
9 Furthermore, employees could not take either of the two 30 minute meal breaks
10 they were entitled to take when they worked more than 10 hours. As a result,
11 Defendant failed to pay its employees for all wages earned.

12 23. As such, Defendants failed to pay for all the hours worked and all wages earned
13 by Plaintiffs and Class Members.

14 24. Defendants failed to maintain accurate payroll records, such that Plaintiffs and
15 Class Members were given wage statements that did not accurately reflect their
16 true compensation and all the hours worked.

17 25. Defendants did not issue an accurate final paycheck to Plaintiffs in accordance
18 with the timeframes prescribed by law, as their last paycheck did not include the
19 compensation for interrupted meal breaks and rest breaks, as well as payment
20 for all hours worked, overtime hours, and accrued sick days.

21 **CLASS ACTION ALLEGATIONS**

22 26. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
23 all other persons similarly situated, and thus, seek class certification. The class
24 shall be defined as follows:

25 "All persons who were employed at BROOKDALE SENIOR LIVING
26 COMMUNITIES, INC., in the State of California during the period commencing four
27 years from the date of PAGA filing, April 29, 2020, through the entry of final judgment
28 in this action."

27 27. Plaintiffs propose that the following sub-classes be created:

- 1 a. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All
2 individuals who have been employed and are currently employed at BROOKDALE
3 SENIOR LIVING COMMUNITIES, INC., within the relevant time periods prior to
4 the filing of this Complaint until resolution of this lawsuit who did not receive their
5 required meal breaks pursuant to the California *Labor Code* and/or applicable
6 orders of the IWC.
- 7 b. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All
8 individuals who have been employed and are currently employed at BROOKDALE
9 SENIOR LIVING COMMUNITIES, INC., within the relevant time periods prior to
10 the filing of this Complaint until resolution of this lawsuit who did not receive their
11 required rest breaks pursuant to the California *Labor Code* and/or applicable orders
12 of the IWC.
- 13 c. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All individuals
14 who have been and are currently employed at BROOKDALE SENIOR LIVING
15 COMMUNITIES, INC., within the relevant time periods prior to the filing of this
16 Complaint until resolution of this lawsuit who were not paid full complete and
17 accurate compensation for all hours worked.
- 18 d. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All individuals
19 who have been and are currently employed at BROOKDALE SENIOR LIVING
20 COMMUNITIES, INC., within the relevant time periods prior to the filing of this
21 Complaint until resolution of this lawsuit who were not paid full complete and
22 accurate compensation for all overtime worked.
- 23 e. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All
24 individuals who have been and are currently employed at BROOKDALE SENIOR
25 LIVING COMMUNITIES, INC., within the relevant time periods prior to the filing
26 of this Complaint until resolution of this lawsuit whose wage statements were
27 inaccurate. This subclass includes the Class Members whose final paycheck did not
28 accurately reflect gross wages earned. Specifically, all the hours worked, the

1 overtime and additional hours of pay employees earn for each workday they did not
2 receive a meal and/or rest break and/or the accrued sick days.

3 f. A proposed sub-class (*hereinafter* "Final Paycheck Class") is defined as: All
4 individuals who were employed at BROOKDALE SENIOR LIVING
5 COMMUNITIES, INC. within the relevant time periods prior to the filing of this
6 Complaint until resolution of this lawsuit who did not receive their final paycheck
7 on the day of termination and/or within 72 hours after the final day of work or at the
8 time of their termination.

9 g. A proposed sub-class (*hereinafter* "Minimum Wage Class") is defined as: All
10 individuals who have been and are currently employed at BROOKDALE SENIOR
11 LIVING COMMUNITIES, INC., within the relevant time periods prior to the filing
12 of this Complaint until resolution of this lawsuit who did not receive at least the
13 minimum wage for all the hours worked.

14 h. A proposed sub-class (*hereinafter* "Sick Day Class") is defined as: All individuals
15 who have been and are currently employed at BROOKDALE SENIOR LIVING
16 COMMUNITIES, INC., within the relevant time periods prior to the filing of this
17 Complaint until resolution of this lawsuit who did not receive sick day payment.

18 28. The proposed class (*hereinafter* "Class") shall consist of all individuals found in
19 the following sub-classes: Meal Period Class, Rest Period Class, Underpaid
20 Class, Overtime Class, Wage Statement Class, Final Paycheck Class, Minimum
21 Wage Class, and Sick Day Class.

22 29. All claims alleged herein arise under California law for which Plaintiffs and
23 Class Members seek relief authorized by California law.

24 30. Excluded from the Class are Defendant(s) in this action, any entity in which
25 Defendant(s) have a controlling interest, any officers, directors, and
26 shareholders of Defendant, and legal representatives, heirs, successors, and
27 assigns of Defendant.

28

1 31. There is a well-defined community of interest in this litigation and the Class is
2 easily ascertainable:

3 i. Numerosity: The members of the Class (and each subclass, if any) are so numerous
4 that joinder of all members would be unfeasible and impractical. The membership
5 of the Class is unknown to Plaintiffs at this time. However, the Class is estimated
6 to be greater than fifty (50) individuals and the identity of such membership is
7 readily ascertainable by inspection of Defendant's employment records.

8 j. Typicality: Plaintiffs are qualified to and will fairly and adequately protect the
9 interests of each Class Member with whom they have a well-defined community of
10 interest, and Plaintiffs' claims (or defenses, if any), are typical of all Class Members
11 as demonstrated herein.

12 k. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect the
13 interests of each Class Member with whom they have a well-defined community of
14 interest and typicality of claims, as alleged herein. Plaintiffs acknowledge that they
15 have an obligation to the Court to make known any relationship, conflict, or
16 differences with any Class Member. Plaintiffs' attorneys and proposed Class
17 counsel are versed in the rules governing class action discovery, certification, and
18 settlement. Plaintiffs have incurred, and, throughout the duration of this action, will
19 continue to incur costs and attorneys' fees that have been, are, and will be
20 necessarily expended for the prosecution of this action for the substantial benefit of
21 each Class Member.

22 l. Superiority: The nature of this action makes the use of class action adjudication
23 superior to other methods. Class action will achieve economies of time, effort, and
24 expense as compared with separate lawsuits, and will avoid inconsistent outcomes
25 because the same issues can be adjudicated in the same manner and at the same
26 time for the entire class.

- 1 m. There are common questions of law and fact as to the Class (and each subclass, if
2 any), that predominate over questions affecting only individual members, including
3 but not limited to:
- 4 n. Whether Defendant had a policy of not providing uninterrupted statutory mandated
5 rest periods to Plaintiffs and Class Members or compensation for rest periods;
- 6 o. Whether Defendant had a policy of not providing uninterrupted statutory mandated
7 meal periods to Plaintiffs and Class Members or compensation for meal periods;
- 8 p. Whether Defendant created schedules in such a manner that made it difficult or
9 impossible for Plaintiffs, and similarly situated Class Members, to take
10 uninterrupted rest periods;
- 11 q. Whether Defendant created schedules in such a manner that made it difficult or
12 impossible for Plaintiffs, and similarly situated Class Members, to take
13 uninterrupted meal periods;
- 14 r. Whether Defendant failed to pay Plaintiffs and Class Members for the overtime
15 hours worked during the relevant timeframe;
- 16 s. Whether Defendant had a policy of requiring Plaintiffs and Class Members to work
17 before clocking in or continue working after clocking out;
- 18 t. Whether Defendant failed to pay Plaintiffs and Class Members for the total hours
19 worked during the relevant timeframe and pay for their sick days;
- 20 u. Whether Defendant failed to keep accurate payroll records, such that inaccurate
21 wage statements were issued to Plaintiffs and Class Members;
- 22 v. Whether Defendant failed to pay Plaintiffs and Class Members an accurate and
23 timely final paycheck;
- 24 w. Whether Defendant failed to pay Plaintiffs and Class Members at least minimum
25 wage for all the hours worked;
- 26 x. Whether Defendant improperly retained, converted, appropriated, or deprived
27 Plaintiffs and other Class Members of the use of monies or sums, which Plaintiffs
28 and Class Members were legally entitled to;

- 1 y. Whether Defendant engaged in unfair business practices in violation of California
- 2 *Business and Professions Code* §§ 17200, et seq.; and
- 3 z. The appropriate amount of damages, restitution, or monetary penalties resulting
- 4 from Defendant’s violations of California law.

FIRST CAUSE OF ACTION

**Violation of *Labor Code* §§ 226.7(a) and IWC Wage Order No. 5-2001 section
12 – Unpaid Missed Rest Breaks**

*(By Plaintiffs, individually, and on behalf of all similarly situated Class Members, Against all
Defendants)*

- 10 32. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully
- 11 stated herein, the material allegations set forth in paragraphs 1 through 31 of
- 12 this Complaint.
- 13 33. At all times herein set forth, Labor Code section 218 authorizes an employee to
- 14 sue directly for any wages or penalty due to him or her under this article of the
- 15 Labor Code.
- 16 34. At all times herein set forth, Labor Code section 226.7(a) provides that no
- 17 employer shall require an employee to work during any rest period mandated by
- 18 an applicable order of the IWC.
- 19 35. The language of IWC Wage Order No. 5-2001 section 12 (A) relating to rest
- 20 periods tracks the language of the Labor Code. (*Code of Regulations*, title 8,
- 21 section 11070, subd. 11.), which states: “Every employer shall authorize and
- 22 permit all employees to take rest periods, which insofar as practicable shall be
- 23 in the middle of each work period. The authorized rest period time shall be
- 24 based on the total hours worked daily at the rate of ten (10) minutes net rest
- 25 time per four hours or major fraction thereof. However, a rest period need not
- 26 be authorized for employees whose total daily work time is less than three and
- 27 one-half (3 ½) hours. Authorized rest period time shall be counted as hours
- 28 worked for which there shall be no deductions from wages”.
- 36. During the relevant time period, Plaintiffs and Class Members worked more
- than three and one-half (3 ½) hours per workday, and were not allowed to take

1 paid uninterrupted rest breaks that they was legally entitled to pursuant to
2 pertinent IWC Wage Order such as No. 5-2001 section 12.

3 37. Defendants’ conduct, as alleged herein, violates pertinent IWC Wage Order
4 such as No. 5-2001 § 12 and Labor Code § 226.7(a), which provides that no
5 employer shall require any employee to work during any rest period mandated
6 by an applicable order of the IWC.

7 38. Pursuant to Labor Code section 226.7(b), and pertinent IWC Wage Order such
8 as No. 5-2001 section 12 (B), Plaintiffs and Class Members are entitled to
9 recover from Defendants one (1) additional hour of pay at regular rate of
10 compensation for each work day that a rest period was not provided, for a four-
11 year period dating back from the date of the commencement of this action.

12 39. Pursuant to Labor Code section 558, Plaintiffs and Class Members are entitled
13 to fifty dollars (\$50.00) for each pay period for which they were underpaid in
14 addition to an amount sufficient to recover underpaid wages and for each
15 subsequent violation, one hundred dollars (\$100.00) for each pay period for
16 which they were underpaid in addition to an amount sufficient to recover
17 underpaid wages.

18 **SECOND CAUSE OF ACTION**

19 **Violation of Labor Code §§ 226.7(a) and 512 – Unpaid Missed Meal Breaks**

20 *(By Plaintiffs, individually, and on behalf of all similarly situated Class Members, against all*
21 *Defendants)*

22 40. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully
23 stated herein, the material allegations set forth in paragraphs 1 through 39 of
24 this Complaint.

25 41. At all times herein set forth, Labor Code section 218 authorizes employees to
26 sue directly for any wages or penalty due to them under this article of the
27 California Labor Code.

28 42. At all times herein set forth, Labor Code section 226.7 provides that no
employer shall require an employee to work during any meal period mandated
by an applicable order of the IWC.

- 1 43. At all times herein set forth, Labor Code section 512(a) provides that an
2 employer may not employ an employee for a work period of more than five (5)
3 hours per day without providing the employee with a meal period of not less
4 than thirty (30) minutes, except that if the total work period per day of the
5 employee is not more than six (6) hours, the meal period may be waived by
6 mutual consent of both the employer and the employee.
- 7 44. At all times herein set forth, Labor Code section 512(a) further provides that an
8 employer may not employ an employee for a work period of more than ten (10)
9 hours per day without providing the employee with a second meal period of not
10 less than thirty (30) minutes, except that if the total hours worked is no more
11 than twelve (12) hours, the second meal period may be waived by mutual
12 consent of the employer and the employee, only if the first meal period was not
13 waived.
- 14 45. The language of applicable IWC Order, section 11 relating to meal periods
15 tracks the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090,
16 subd. 11.)
- 17 46. Defendants fostered a work environment where the taking of uninterrupted
18 thirty (30) minute meal breaks by its employees was essentially prohibited
19 because Defendants were more concerned about their profit margin, than its
20 own employees' welfare. As such, Plaintiffs and Class Members could not take
21 any thirty (30) minute uninterrupted meal breaks without the risk of being
22 reprimanded or terminated.
- 23 47. Because Defendants failed to afford proper meal periods, they are liable to
24 Plaintiffs and Class Members for one hour of additional pay at the regular rate
25 of compensation for each workday that the proper meal periods were not
26 provided, pursuant to Cal. Labor Code Section 226.7(b) and applicable IWC
27 wage order, Section 11(B).
- 28 48. By violating Cal. Labor Code Section 226.7 and 512, and applicable wage
order, Section 11, Defendants are also liable to Plaintiffs and Class Members for
reasonable attorneys' fees and costs under Cal. Labor Code Section 218.5.

THIRD CAUSE OF ACTION

***Failure to Pay All Overtime Wages Earned, in violation of Labor Code Sections 510
and 1194***

*(By Plaintiffs, individually, and on behalf of all similarly situated Class Members, against all
Defendants)*

49. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set forth in paragraphs 1 through 48 of this Complaint.

50. At all relevant times during the applicable limitations period, Plaintiffs and Class Members have been a non-exempt employee of Defendants and entitled to the benefits of Cal. Labor Code Sections 510 and 1194 and the Wage Order.

51. Section 2(k) of the Wage Order defines hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

52. In relevant part, Section 3 of the applicable Wage Order states: (A) Daily Overtime- General Provisions:

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

1 (b) Double the employee's regular rate of pay for all hours worked in excess of 12
2 hours in any workday and for all hours worked in excess of eight (8) hours on the
3 seventh (7th) consecutive day of work in a workweek.

4 (c) The overtime rate of compensation required to be paid to a nonexempt full-time
5 salaried employee shall be computed by using the employee's regular hourly salary as
6 one fortieth (1/40) of the employee's weekly salary.

7 53. Cal. Labor Code Section 510 states: "Eight hours of labor constitutes a day's
8 work. Any work in excess of eight hours in one workday and any work in
9 excess of 40 hours in any one workweek and the first eight hours worked on the
10 seventh day of work in any one workweek shall be compensated at the rate of
11 no less than one and one-half times the regular rate of pay for an employee. Any
12 work in excess of 12 hours in one day shall be compensated at the rate of no less
13 than twice the regular rate of pay for an employee. In addition, any work in
14 excess of eight hours on any seventh day of a workweek shall be compensated
15 at the rate of no less than twice the regular rate of pay of an employee. Nothing
16 in this section requires an employer to combine more than one rate of overtime
17 compensation in order to calculate the amount to be paid to an employee for any
18 hour of overtime work."

19 54. With respect to overtime wages, the regular rate of pay under California law
20 must include "all remuneration for employment paid to, on behalf of, the
21 employee." O.L. 2002.06.14 (quoting 29 U.S.C. Section 207(e)). This
22 requirement includes, but is not limited to, commissions and nondiscretionary
23 bonuses. See *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal
24 App. 4th 893, 904-05.

25 55. During the relevant timeframe, Plaintiffs and Class Members were working
26 more than 8 hours a day and more than 40 hours a week and were not paid
27 overtime wages for all the hours they worked overtime. Plaintiffs and Class
28 Members were not paid for 30 minutes of meal break despite their meal break
being interrupted because Defendants were understaffed and had to work during
their lunch breaks in order to complete their assignments. In addition, Plaintiffs
and Class Members were not paid compensation for their missed rest breaks.

1 56. Plaintiffs and Class Members have been damaged in a sum to be proven and
2 request relief as described below.

3 **FOURTH CAUSE OF ACTION**

4 ***Failure to Pay Minimum Wage, Pay for all Wages Earned (Labor Code Section 204,
5 1194 and 1197)***

6 *(By Plaintiffs, individually, and on behalf of all similarly situated Class Members, against all
7 Defendants)*

8 57. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully
9 stated herein, the material allegations set forth in paragraphs 1 through 56 of
10 this Complaint.

11 58. Cal. Labor Code Section 204 requires California employers to pay employees
12 for all wages earned.

13 59. Defendants failed to compensate Plaintiffs and Class Members for all hours
14 worked, including, but not limited to, the hours worked during their meal and
15 rest breaks, as well as overtime pay, and for which they did not receive the
16 proper compensation under the law.

17 60. Plaintiffs and Class Members have been damaged in a sum to be proven and
18 requests relief as described below.

19 **FIFTH CAUSE OF ACTION**

20 ***Failure to maintain accurate payroll records; violation of California Labor Code Sections
21 226 and 1174***

22 *(By Plaintiffs, individually, and on behalf of all similarly situated Class Members, Against all
23 Defendants)*

24 61. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully
25 stated herein, the material allegations set out in paragraphs 1 through 60 of this
26 Complaint.

27 62. Cal. Labor Code Section 226(a), applicable IWC such as wage order No. 5-2001
28 and 16-2001, Section 7(A), and Cal. Labor Code Section 1174 require
employers to maintain accurate payroll records and to provide semi-monthly or
at the time of each payment of wages to furnish each employee with a statement
itemizing, among other things, the total hours worked by the employee.

63. Defendants have violated Cal. Labor Code Sections 226(a) and 1174, and
applicable IWC wage order such as WO No. 5, Section 7(A) by willfully failing

1 to keep required payroll records showing the actual hours worked each day by
2 Plaintiffs and Class Members. As a direct and proximate result of Defendants'
3 failure to maintain payroll records, Plaintiffs and Class Members have suffered
4 economic harm as they have been precluded from accurately monitoring the
5 number of hours worked and thus seeking payment for all missed meal periods
6 and rest breaks, as well as overtime hours worked.

6 64. Plaintiffs and Class Members have been damaged in a sum to be proven and
7 request relief as described below.

8 **SIXTH CAUSE OF ACTION**

9 ***Failure to pay wages upon separation (Labor Code Sections 201-203)***

10 *(By Plaintiffs, individually, and on behalf of all similarly situated Class Members, against all*
11 *Defendants)*

11 65. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully
12 stated herein, the material allegations set out in paragraphs 1 through 64 of this
13 Complaint.

14 66. Labor Code sections 201 – 203 provide that if an employer discharges an
15 employee, the wages earned and unpaid at the time of discharge are due and
16 payable immediately, and that if an employee voluntarily leaves his or her
17 employment, his or her wages shall become due and payable not later than
18 seventy-two (72) hours thereafter; unless the employee had given seventy-two
19 (72) hours previous notice of his or her intention to quit, in which case the
20 employee is entitled to his or her wages at the time of quitting. Labor Code
21 section 203 provides that if an employer willfully fails to pay wages owed, in
22 accordance with Labor Code sections 201 and 202, then the wages of the
23 employee shall continue as a penalty from the due date, and at the same rate
24 until paid or until an action is commenced; but the wages shall not continue for
25 more than thirty (30) days.

25 67. During the relevant time period, Defendants failed to pay Plaintiffs, and Class
26 Members, who are no longer employed by Defendant, for all the hours they had
27 worked and for the statutory breaks they were not provided with. Plaintiffs and
28 Class Members claim that once they had stopped working, they did not timely
receive all wages owed to them within the timeframe required by law. This

would include, but not be limited to, wages for all hours worked (including overtime), accrued sick pay, and compensation for hours worked during rest and meal breaks. As a result, Plaintiffs claim a violation of Labor Code section 201-203 on behalf of themselves and all other employees who stopped working for the Defendant.

68. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

SEVENTH CAUSE OF ACTION

Failure to pay for sick days (Violation of Labor Code §246(a))

(By Plaintiffs Against all Defendants)

69. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in paragraphs 1 through 68 of this Complaint.

70. Cal. Labor Code Section 246(a) provides: (a) (1) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

71. Defendants failed and refused to pay Plaintiffs and Class Members for their sick days despite the employees being sick.

72. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

EIGHTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200, et seq.

(By Plaintiffs, individually, and on behalf of all similarly situated Class Members, Against all Defendants)

73. Plaintiffs incorporates by reference and re-alleges, as if fully stated herein, the material allegations set out in paragraphs 1 through 72.

74. California Business & Professions Code Section 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

1 75. California Business & Professions Code Section 17204 allows “any person
2 acting for the interest of itself, its members or the general public” to prosecute a
3 civil action for violation of the UCL.

4 76. Beginning at an exact date unknown to Plaintiffs, but at least four years prior to
5 the filing of this action, Defendants have improperly, fraudulently, and
6 unlawfully failed to provide Plaintiffs with meal and rest breaks, failed to
7 provide compensation for the missed meal and rest breaks, failed to provide
8 compensation for all hours worked and all wages earned, failed to pay
9 compensation for all over-time hours worked, failed to pay for sick days, and
10 provided Plaintiffs with inaccurate wage statements, and have thereby
11 committed unlawful, unfair, and/or fraudulent business acts and practices as
12 defined by California Business & Professions Code Section 17200, by engaging
13 in the following:

- 14 i. Failing and refusing to provide meal periods and rest breaks to Plaintiffs;
- 15 ii. Failing to pay all accrued meal period and rest break compensation to Plaintiffs;
- 16 iii. Failing to pay for all hours worked and pay for all overtime compensation to Plaintiffs;
- 17 iv. Failing to maintain accurate payroll record and provide accurate itemized wage statement
18 to Plaintiffs; and
- 19 v. Failing to pay for sick days.

20 The violation of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and practices for
21 purposes of California Business and Professions Code Section 17200.

22 77. As a direct and proximate result of Defendants’ unlawful, unfair, and/or
23 fraudulent acts

24 and practices described herein, Defendants have received and continue to hold ill-gotten gains
25 belonging to Plaintiffs. As a direct and proximate result of Defendants’ unlawful business practices,
26 Plaintiffs have suffered economic injuries including, but not limited to, compensation for missed meal
27 periods and over-time hours worked. Defendants have profited from their unlawful, unfair, and/or
28 fraudulent acts and practices in failing to provide meal period and rest break compensation to
Plaintiffs, as well as compensation for over-time hours worked.

78. Plaintiffs are entitled to restitution pursuant to California Business &
Professions Code

1 Sections 17203 and 17208 for all meal period and rest break compensation, unpaid wages and interest
2 since four years prior to the filing of this action.

3 79. Plaintiffs are entitled to enforce all applicable penalty provisions of the
4 California
5 Labor Code pursuant to California Business & Professions Code Section 17202.

6 80. Plaintiffs' success in this action will enforce important rights affecting the
7 public
8 interest. In this regard, Plaintiffs sue on behalf of themselves and the general public. Plaintiffs seek
9 and are entitled to unpaid compensation, declaratory and injunctive relief, civil penalties, and any
10 other appropriate remedy.

11 81. Injunctive relief is necessary and appropriate to prevent Defendants from
12 continuing
13 and repeating their unlawful, unfair and fraudulent business acts and practices alleged above.

14 82. In order to prevent Defendants from profiting and benefitting from their
15 wrongful and
16 illegal acts and continuing those acts, an order requiring Defendants to disgorge all the profits and
17 gains they have reaped and restore such profits and gains to the Plaintiffs, from whom they were
18 unlawfully taken.

19 83. Plaintiff have assumed the responsibility of enforcement of the laws and lawful
20 claims
21 specified herein. There is a financial burden incurred in pursuing this action, which is in the public
22 interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil
23 Procedure Section 1021.5.

24 84. By all of the said foregoing alleged conduct Defendants have committed, and
25 are continuing to commit, ongoing unlawful, unfair and fraudulent business
26 practices within the meaning of Cal. Business & Professions Code Section
27 17200, et seq.

28 85. As a direct and proximate result of the unfair business practices described
above, Plaintiffs has suffered significant losses and Defendants have been
unjustly enriched.

1 12. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;

2 13. For such other and further relief as the court deems just and proper.

3
4 DATED: April 29, 2020

LAW OFFICES OF FARRAH MIRABEL

5
6 BY: /s/ Farrah Mirabel
7 Farrah Mirabel, Esq.
8 ATTORNEY FOR PLAINTIFFS
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Brookdale Senior Living Communities Workers Denied Proper Pay, Uninterrupted Breaks](#)
