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19 and all others similarly situated

20 SUPERIOR COURT OF CALIFORNIA

21 COUNTY OF ALAMEDA

22 MICHELLE OTTS, on behalf of herself and all
23 others similarly situated,

24 Plaintiffs,

25 vs.

26 CARE OPTIONS MANAGEMENT PLANS AND
27 SUPPORTIVE SERVICES, LLC, a/k/a
28 C.O.M.P.A.S.S., LLC, JOANNE MCCARLEY,
SADIE HUFFMASTER a/k/a SADIE HESS, ERIC
HESS, and Does 1 through 100, inclusive,

Defendants.

No. RG11591441

**AMENDED CLASS ACTION
COMPLAINT**

FAXED

Plaintiff Michelle Otts ("Plaintiff"), by her attorneys, brings this action on behalf of herself, all other persons similarly situated and the general public, and on information and belief, except those allegations that pertain to the named Plaintiff and her attorneys (which are alleged on personal knowledge), hereby allege as follows:

1 1. Defendant Care Options Management Plans And Supportive Services, LLC is a
2 limited liability company doing business throughout the State of California.

3 2. Defendants Joanne McCarley, Sadie Hess, and Eric Hess are residents of the State
4 of California and are the owners and/or members of Care Options Management Plans And
5 Supportive Services, LLC (collectively, "Defendants").

6 3. This action alleges that Care Options Management Plans And Supportive Services,
7 LLC ("C.O.M.P.A.S.S."): (1) failed to reimburse Plaintiff and those similarly situated for
8 expenses incurred to perform their jobs in violation of California Labor Code section 2802; (2)
9 failed to pay regular and overtime wages in violation of California Labor Code sections 204, 510
10 and 1194 and the applicable Industrial Welfare Commission Wage Orders; (3) failed to provide
11 off-duty meal periods and to pay compensation for work without off-duty meal periods to its
12 California employees in violation of California Labor Code sections 226.7 and 512, and applicable
13 Industrial Welfare Commission orders; and, (4) failed to provide accurate wage statements to
14 employees as required by California Labor Code section 226.

15 4. This action seeks relief for unremedied violations of California law, including, inter
16 alia; damages, and/or restitution, as appropriate, to members of the Class, and to victims of the
17 practices at issue, who have not received reimbursement for expenses incurred to perform their
18 jobs, who have not received compensation for all hours worked, who have not received overtime
19 compensation for time worked in excess of eight hours in one day or forty hours in one week, who
20 did not receive timely off-duty meal periods and who did not receive compensation for work
21 without timely off-duty meal periods, and who failed to receive accurate wage statements.

22 5. Otts is an adequate and proper class representative. Otts brings this action in her
23 individual capacity, on behalf of all others similarly situated, and, pursuant to California Business
24 & Professions Code section 17204, on behalf of the general public. Otts is a former employee of
25 C.O.M.P.A.S.S. Throughout her employment with C.O.M.P.A.S.S., Defendants employed Otts as
26 a Direct Care staff member in California. While employed as a Direct Care staff member, Otts
27 worked in excess of eight hours per day and forty hours per week, for which Defendants did not
28 pay her overtime compensation because Defendants intentionally misclassified those working as

1 Direct Care staff members as exempt. Otts worked additional hours for which Defendant did not
2 compensate her. As a result of these practices, Defendants paid Plaintiff and those similarly
3 situated wages less than that required by law. Defendants failed to provide Otts and all others
4 similarly situated compensation for expenses incurred in the course of completing their job duties
5 and failed to provide Otts and all others similarly situated with accurate statements of wages.
6 Defendants further failed to provide Otts and all others similarly situated with off-duty meal
7 periods, and to pay compensation for work without off-duty meal periods.

8 6. Defendants are, and at all relevant times were, doing business in the State of
9 California and are employers under applicable Industrial Welfare Commission Orders.

10 7. The names and capacities of defendants sued herein under California Code of Civil
11 Procedure section 474 as Does 1 through 100, inclusive, are presently not known to Plaintiff, who
12 therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this
13 Complaint and include these Doe defendants' names and capacities when they are ascertained.
14 Each of the fictitiously named defendants is responsible in some manner for the conduct alleged
15 herein and for the injuries suffered by Plaintiff, the members of the Classes, and the general
16 public.

17 8. At all times mentioned in the causes of action alleged herein, each and every
18 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
19 alleged in the causes of action stated herein, each and every Defendant was acting within the
20 course and scope of this agency or employment and was acting with the consent, permission and
21 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the
22 causes of action stated herein were ratified and approved by every other Defendant or their
23 officers or managing agents.

24 9. This action seeks relief on behalf of a class of persons in the employ of Defendants
25 in California in the four years preceding the filing date of this lawsuit and the present comprised of
26 the following:

- 27 (1) All Direct Care staff members ("Class A");
28 (2) All Direct Care staff members who were assigned to In-Home Supportive

Services ("IHSS") clients ("Class B"); and,

- (3) All Direct Care staff members who worked shifts in which the Direct Care staff member was the only employee of Defendants on duty ("Class C").

10. The Classes are sufficiently numerous. The Classes encompass Defendants' employees, who are geographically dispersed throughout California, the joinder of whom in one action is impracticable, and the disposition of whose claims in a class action will provide substantial benefits to both the parties and the Court.

11. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact common to the Classes predominate over questions that may affect individual class members, including, but not limited to, the following:

- (a) Whether Defendants implemented and engaged in a systematic practice whereby they unlawfully failed to pay overtime wages due;
- (b) Whether Defendants implemented and engaged in a systematic practice whereby they unlawfully failed to pay wages for hours worked;
- (c) Whether Defendants implemented and engaged in a systematic practice whereby they unlawfully failed to compensate for expenses incurred;
- (d) Whether Defendants implemented and engaged in a systematic practice whereby they failed to provide timely off-duty meal periods and to pay compensation for work without timely off-duty meal periods;
- (e) Whether Defendants implemented and engaged in a systematic practice whereby they failed to provide accurate wage statements; and,
- (f) Whether the systematic acts and practices of Defendants as alleged herein violated, inter alia, applicable provisions of the California Labor Code, including but not limited to sections 204, 226, 226.7, 510, 512, 558, 1174, 1194, and 2802, the Labor Code Private Attorneys General Act, Labor Code section 2698, et seq., applicable Industrial Welfare Commission Orders, and California Business & Professions Code section 17200, et seq.

1 12. Because Defendants required Plaintiff to incur expenses in the course of her
2 employment and failed to compensate her for such expenses, failed to pay Plaintiff for overtime
3 worked, failed to pay Plaintiff wages for hours worked, failed to provide timely and accurate wage
4 statements, failed to provide Plaintiff with timely off-duty meal periods and to pay compensation
5 for work without timely off-duty meal periods, and failed to provide Plaintiff with accurate wage
6 statements, Plaintiff asserts claims typical of the claims of the Classes.

7 13. Plaintiff will fairly and adequately represent and protect the interests of the Classes
8 in that she has no disabling conflicts of interest that would be antagonistic to those of the other
9 members of the Classes. Plaintiff retained counsel who are competent and experienced in the
10 prosecution of class action wage and hour violations.

11 14. Plaintiff and the members of the Classes all similarly suffered irreparable harm and
12 damages as a result of Defendants' unlawful and wrongful conduct, including but not limited to
13 Defendants' systematic failure to pay for overtime worked, failure to pay wages for hours worked,
14 systematic failure to provide compensation for expenses incurred in the course of employment,
15 and systematic failure to provide timely off-duty meal periods and to pay compensation for work
16 without timely off-duty meal periods, makes class treatment especially appropriate. Because
17 Defendants' pay, expense reimbursement, and meal period practices for its employees and class
18 members follow common patterns, all of which are reflected in the records possessed by
19 Defendants, this action will provide substantial benefits to both the members of the Classes and
20 the court. Absent this action, Defendants' unlawful conduct will continue unremedied and
21 uncorrected.

22 15. The labor practices and all other aspects of operation of facilities owned and
23 operated by Defendants are controlled by uniform standards established by Defendants and are
24 monitored closely by the regional and senior management of Defendants.

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16. Plaintiff and the members of Classes incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

17. During all relevant periods, C.O.M.P.A.S.S. required Plaintiff and the members of Classes A and B to work in excess of 8 hours per day and 40 hours per week.

18. During all relevant periods, both the Labor Code and the pertinent wage orders required that all work performed by an employee in excess of 8 hours per day and 40 hours per week to be compensated at one and one-half times the employee's regular rate of pay. C.O.M.P.A.S.S. intentionally misclassified and therefore failed to compensate Plaintiff and the members of the Classes A and B for overtime worked. C.O.M.P.A.S.S. further failed to provide Plaintiff and the members of Classes A and B with wage statements as required by California Labor Code section 226. Plaintiff and the members of Classes A and B are entitled to recover their overtime compensation and penalties arising therefrom.

19. Plaintiff and the members of Classes A and B are therefore entitled to the relief requested below.

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20. Plaintiff and the members of the Classes repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

21. During all relevant periods, C.O.M.P.A.S.S. required Plaintiff and the members of Class A to incur expenses in the course of performing their job duties. C.O.M.P.A.S.S. failed to reimburse Plaintiff and the members of Class A for expenses incurred.

22. Plaintiff and the members of Class A are therefore entitled to the relief requested below.

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23. Plaintiff and the members of the Classes incorporate by reference the allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

25. During all relevant periods, C.O.M.P.A.S.S. failed to provide Plaintiff and the members of Classes A and B with timely off-duty meal periods and failed to pay Plaintiff and the members of Classes A and B compensation for work without timely off-duty meal periods, in violation of the requirements set forth in California Labor Code sections 226.7 and 512, and the applicable Industrial Welfare Commission orders. C.O.M.P.A.S.S. further failed to incorporate this compensation into the regular rate of pay for Plaintiff and the members of Classes A and B for the payment of overtime wages, as required by law. C.O.M.P.A.S.S. therefore failed to provide Plaintiff and the members of Classes A and B with wage statements as required by California Labor Code section 226.

26. During all relevant periods, C.O.M.P.A.S.S. failed to pay Plaintiff and the members of Class C for all hours worked. In so doing, C.O.M.P.A.S.S. failed to pay all wages owed in violation of California Labor Code section 204. C.O.M.P.A.S.S. also failed to pay overtime wages owed pursuant to California Labor Code section 1194 and to reimburse expenses as required pursuant to California Labor Code section 2802.

27. The policies, acts and practices heretofore described were and are unlawful business acts or practices because C.O.M.P.A.S.S.'s failure to pay for overtime worked, failure to provide accurate and timely wage statements, failure to compensate Plaintiff and those similarly situated for expenses incurred, failure to provide timely off-duty meal periods, failure to pay compensation for work without timely off-duty meal periods, and failure to pay wages for all hours worked, violates applicable California Labor Code sections, including but not limited to

1 sections 204, 226, 226.7, 510, 512, 558, 1174, 1194, and 2802, the Labor Code Private Attorneys
2 General Act, Labor Code section 2698, et seq., applicable Industrial Welfare Commission Wage
3 Orders, and other provisions of California common and/or statutory law. Plaintiff reserves the
4 right to allege additional statutory and common law violations by C.O.M.P.A.S.S. Such conduct
5 is ongoing to this date.

6 28. Business & Professions Code section 17200, et seq., also prohibits acts of unfair
7 competition, which shall mean and include any “unfair business act or practice.”

8 29. The policies, acts or practices described herein were and are an unfair business act
9 or practice because any justifications for C.O.M.P.A.S.S.’s illegal and wrongful conduct were and
10 are vastly outweighed by the harm such conduct caused Plaintiff, the class members, and the
11 members of the general public. Such conduct is ongoing to this date.

12 30. Plaintiff and the members of the Classes are therefore entitled to the relief
13 requested below.

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15 **FOURTH CAUSE OF ACTION**
16 **(Labor Code Private Attorneys General Act of 2004: Labor Code section 2698, et seq.)**
17 **(Against all Defendants)**

18 31. Plaintiff and the members of the Classes repeat and re-allege each and every
19 allegation contained in the foregoing paragraphs as if fully set forth herein.

20 32. Defendants are persons within the meaning of Labor Code sections 18 and 2699(c).

21 33. The policies, acts and practices heretofore described were and are unlawful acts in
22 violation of applicable Labor Code sections and the applicable Industrial Welfare Commission
23 Wage Orders and give rise to statutory penalties as a result of such conduct, including, but not
24 limited to, penalties as provided by the Labor Code Private Attorneys General Act of 2004
25 (“PAGA”). Plaintiff, as an aggrieved employee and a deputized attorney general, hereby seeks
26 recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004
27 on behalf of herself and other current and former aggrieved employees of Defendants against
28 whom one or more of the violations of the Labor Code was committed.

1 34. On August 19, 2011, Plaintiff gave written notice by certified mail to the California
2 Labor and Workforce Development Agency ("LWDA") and Defendants C.O.M.P.A.S.S., Joanne
3 McCarley, Sadie Hess, and Eric Hess of violations as prescribed by California Labor Code section
4 2699.3. Plaintiff did not receive written notification from the LWDA of its intent to investigate
5 the allegations set forth in Plaintiff's August 19, 2011 letter or written notice of cure by
6 Defendants, as prescribed by California Labor Code section 2699.3.

7 **PRAYER FOR RELIEF**

8 WHEREFORE Plaintiff prays for judgment and relief as follows:

- 9 1. An order certifying that the action may be maintained as a class action;
- 10 2. Compensatory and statutory damages, penalties and restitution, as appropriate and
11 available, in an amount to be proven at trial based on, inter alia, the unpaid balance of monies
12 Defendants owe;
- 13 3. For recovery of penalties as provided by the Labor Code Private Attorneys General
14 Act of 2004;
- 15 4. Costs of this suit and attorneys' fees as authorized by Labor Code sections 1194,
16 2699, and 2802;
- 17 5. Pre- and post-judgment interest;
- 18 6. For punitive damages as appropriate and available under each cause of action; and,
- 19 7. Such other and further relief as the Court deems just and proper.

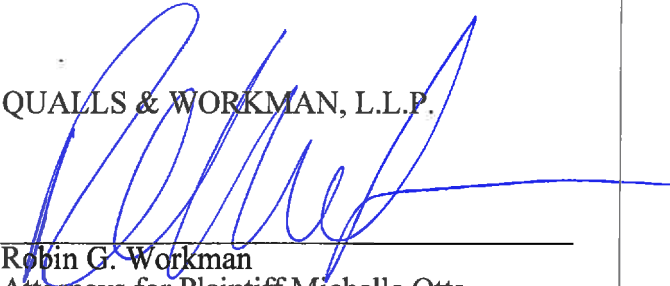
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21 **REQUEST FOR JURY TRIAL**

22 Plaintiff hereby requests a trial by jury.

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24 Date: October 11, 2011

QUALLS & WORKMAN, L.L.P.

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26 By:


27 Robin G. Workman
28 Attorneys for Plaintiff Michelle Otts
and all others similarly situated