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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF EL DORADO**

ROBERT EVANS, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

MARSHALL MEDICAL CENTER, a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: **PC 20200051**

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE
§ 226;
- (2) VIOLATION OF CAL. LABOR
CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

Assigned to
Judge Dylan Sullivan
For all purposes

BY FAX

Plaintiff Robert Evans (together, "Plaintiff") hereby submits this Class Action Complaint ("Complaint") against Defendant Marshall Medical Center and Does 1 through 50 (hereinafter collectively referred to as "Defendants") on behalf of himself and the class of all other similarly situated current and former employees of Defendants, for penalties and/or damages for failure to provide accurate itemized wage statements under the California Labor Code as follows:

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5. The policies, practices and customs of defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code.

7. Venue is proper because Defendants do business in El Dorado County and Plaintiff worked for Defendants in El Dorado County.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed

1 by California Labor Code §§ 226 and 2698, *et seq.*

2 10. Plaintiff is informed and believes and based thereon alleges Defendant Marshall
3 Medical Center was and is a California corporation doing business in the State of California
4 providing healthcare services in and around Placerville, California.

5 11. Plaintiff is informed and believes and thereon alleges that at all times herein
6 mentioned DOES 1 through 50, are and were corporations, business entities, individuals, and
7 partnerships, licensed to do business and actually doing business in the State of California.

8 12. As such, and based upon all the facts and circumstances incident to Defendants'
9 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

10 13. Plaintiff does not know the true names or capacities, whether individual, partner
11 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
12 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
13 complaint when the true names and capacities are known. Plaintiff is informed and believes and
14 based thereon alleges that each of said fictitious defendants were responsible in some way for the
15 matters alleged herein and proximately caused Plaintiff and members of the general public and
16 class to be subject to the illegal employment practices, wrongs, and injuries complained of
17 herein.

18 14. At all times herein mentioned, each of said defendants participated in the doing of
19 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants and employees of each of the other
21 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
22 acting within the course and scope of said agency and employment.

23 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
25 joint venturer of, or working in concert with each of the other co-Defendants and was acting
26 within the course and scope of such agency, employment, joint venture, or concerted activity.
27 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
28 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting

Defendants.

16. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

17. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, of:

- a. A class of all current and former non-exempt employees who were paid overtime wages and worked for Defendants in the State of California at any time from January 28, 2019, to the present (the “Overtime Wage Statement Class”); and
- b. A class of all current and former non-exempt employees who were paid shift differential wages, including, but not limited to, weekend shift differential wages, and who worked for Defendants in the State of California at any time from January 28, 2019, to the present. (the “Shift Differential Wage Statement Class”).

19. Plaintiff further reserves the right to amend such class definitions based upon further discovery.

20. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide accurate, itemized wage statements.

1 21. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
2 necessary steps to represent fairly and adequately the interests of the Class defined above.
3 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
4 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
5 actions in the past and currently have a number of wage-and-hour class actions pending in
6 California state and federal courts.

7 22. Defendants uniformly administered a corporate policy and practice of failing to
8 provide accurate itemized wage statements in violation of Labor Code § 226(a).

9 23. **Common Question of Law and Fact:** There are predominant common questions
10 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
11 concerning Defendants' policy and practice of failing to provide accurate itemized wage
12 statements in violation of Labor Code § 226(a).

13 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
14 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
15 as the Class Members. As with other Class Members, Plaintiff was not provided proper and
16 accurate itemized wage statements. Specifically, during Plaintiff's employment with
17 Defendants, Plaintiff earned overtime and shift differential wages. Whenever overtime and/or
18 shift differential wages were paid, however, the wage statements issued to Plaintiff reflected
19 payment at Plaintiff's base hourly rate of pay, rather than 1.5 times his regular rate of pay, in
20 violation of Labor Code § 226(a)(9). In addition, whenever shift differential wages were paid,
21 the wage statements failed to list the correct total hours worked in violation of Labor Code §
22 226(a)(2). Adding up the sum of all hours Plaintiff worked in a particular pay period does not
23 equal the number identified as the total on the wage statements. Therefore, Plaintiff is a member
24 of the Class and has suffered the alleged violations of California Labor Code § 226.

25 25. The California Labor Code upon which Plaintiff bases these claims are broadly
26 remedial in nature. These laws and labor standards serve an important public interest in
27 establishing minimum working conditions and standards in California. These laws and labor
28 standards protect the average working employee from exploitation by employers who may seek

1 to take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment.

3 26. The nature of this action and the format of laws available to Plaintiff and
4 members of the Class identified herein make the class action format a particularly efficient and
5 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
6 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
7 advantage since it would be able to exploit and overwhelm the limited resources of each
8 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
9 member to pursue an individual remedy would also discourage the assertion of lawful claims by
10 employees who would be disinclined to file an action against their former and/or current
11 employer for real and justifiable fear of retaliation and permanent damage to their careers at
12 subsequent employment.

13 27. The prosecution of separate actions by the individual class members, even if
14 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
15 to individual class members against the Defendants and which would establish potentially
16 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
17 individual class members which would, as a practical matter, be dispositive of the interest of the
18 other class members not parties to the adjudications or which would substantially impair or
19 impede the ability of the class members to protect their interests. Further, the claims of the
20 individual members of the class are not sufficiently large to warrant vigorous individual
21 prosecution considering all of the concomitant costs and expenses.

22 28. Such a pattern, practice and uniform administration of corporate policy regarding
23 illegal employee compensation described herein is unlawful and creates an entitlement to
24 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
25 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
26 § 226, 226.3, and Code of Civil Procedure § 1021.5.

27 29. Proof of a common business practice or factual pattern, which the named Plaintiff
28 experienced and is a representative of, will establish the right of each of the members of the

1 Plaintiff class to recovery on the causes of action alleged herein.

2 30. The Plaintiff class is commonly entitled to a specific fund with respect to the
3 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
4 entitled to restitution of those funds being improperly withheld by Defendants. This action is
5 brought for the benefit of the entire Class and will result in the creation of a common fund.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE § 226**

8 **(BY PLAINTIFF AND THE OVERTIME AND SHIFT DIFFERENTIAL WAGE**
9 **STATEMENT CLASSES AGAINST ALL DEFENDANTS)**

10 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
11 though fully set forth herein.

12 32. Defendants failed in their affirmative obligation to provide accurate itemized
13 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
14 records in violation of Labor Code § 226.

15 33. Labor Code § 226(a)(9) requires that an employer provide employees with wage
16 statements that show all applicable hourly rates and the corresponding number of hours worked
17 at each rate. Labor Code § 226(a)(2) requires that an employer provide employees with wage
18 statements that show the total hours worked by the employee. The wage statements issued by
19 Defendants to Plaintiff and Class Members did not list the correct hourly rates of pay for
20 overtime and shift differential wages. In addition, the wage statements did not list the correct
21 total hours worked whenever shift differential wages were paid.

22 34. Such a pattern, practice and uniform administration of corporate policy as
23 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
24 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
25 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
26 California Labor Code § 226.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

3 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

4 35. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 34, as
5 though fully set forth herein.

6 36. Plaintiff brings this cause of action on behalf of the State of California and seeks
7 penalties on behalf of all aggrieved employees from January 13, 2019, through the present, for
8 Defendants' violation of Labor Code § 226.

9 37. Defendants failed in their affirmative obligation to provide accurate itemized
10 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
11 records in violation of Labor Code § 226. Specifically, the wage statements provided to
12 Defendants' employees did not identify the correct hourly rates of pay for overtime and shift
13 differential wages, as well as the correct total hours worked whenever shift differential wages
14 were paid.

15 38. On or about January 13, 2020, Plaintiff sent written notice to the California Labor
16 & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code § 226,
17 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). As part of
18 that Notice, Plaintiff demanded that Defendant cure all violations and pay all applicable
19 penalties.

20 39. As of the date of the filing of this Complaint, the LWDA has yet to provide notice
21 to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in the
22 written notice.

23 40. As such, pursuant to Labor Code § 2699(a), Plaintiff and the aggrieved employees
24 may seek recovery of all applicable civil penalties on behalf of the State of California for
25 Defendants' violations of Labor Code § 226.

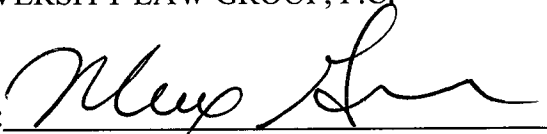
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
28 this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing Counsel for Plaintiff as class counsel;
4. Upon the First Cause of Action, for penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to Labor Code § 2698, *et seq.*, and for costs and attorneys' fees;
6. On all causes of action for attorneys' fees and costs as provided by California Labor Code § 226, and 2699, and Code of Civil Procedure section 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

DATED: January 28, 2020

DIVERSITY LAW GROUP, P.C.

By: 
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