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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ALVIN N. WILLIAMS III, as an individual
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

NO ORDINARY MOMENTS, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 30-2020-01140925-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

Assigned for all purposes to:

Judge William Claster

Dept: Cx104

1 Plaintiff Alvin N. Williams III (“Plaintiff”), on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendants No Ordinary
3 Moments, Inc., a California Corporation; and DOES 1 to 100, inclusive (“Defendants”), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
7 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
8 *seq.*

9 2. This Court has jurisdiction over Defendants because, upon information and belief,
10 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
11 or otherwise intentionally avail themselves to the California market so as to render the exercise
12 of jurisdiction over them by the California courts consistent with the traditional notions of fair
13 play and substantial justice.

14 **VENUE**

15 3. Venue as to each Defendant is proper in this judicial district pursuant to California
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
17 complained of herein occurred in the County of Orange. Further, at all times relevant herein
18 Plaintiff was employed by Defendants within the County of Orange.

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident, residing in the County of Orange. During
22 the one year immediately preceding Plaintiff’s giving of the required notice under the PAGA, and
23 within the statute of limitations periods applicable to the cause of action pled herein, Plaintiff was
24 employed by Defendants as an hourly non-exempt employee.

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
27 present, Defendants did (and do) business by providing residential and off-site care to patients
28 with developmental disabilities, and employed Plaintiff and other similarly-situated hourly non-

1 exempt employees within the County of Orange and, therefore, were (and are) doing business in
2 the County of Orange and the State of California.

3 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were licensed to do business in California and the County of Orange, and were
5 the employers of Plaintiff and the Aggrieved Employees.

6 7. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Representative Action Complaint when such true names and capacities are discovered.
10 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
11 whether individual, partners, or corporate, were responsible in some manner for the acts and
12 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees to be
13 subject to the unlawful employment practices, wrongs, injuries and damages complained of
14 herein.

15 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees.

17 9. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
19 Defendants, and each of them, were the agents, servants, and employees of each and every one of
20 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
21 were acting within the course and scope of said agency and employment. Defendants, and each
22 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
23 omissions complained of herein.

24 10. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
28 Aggrieved Employees.

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12. During Plaintiff's employment with Defendants, Defendants utilized a timekeeping system that failed to compensate Plaintiff and other aggrieved employees for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Defendants required Plaintiff and other aggrieved employees to clock in and out of shifts through a smartphone application. Upon information and belief, although Defendants recorded Plaintiff and other aggrieved employees' hours worked to the minute, Defendants rounded Plaintiff's and other aggrieved employees' timekeeping entries to the nearest quarter hour increment. Defendants' timekeeping policies/practices regularly, systematically, and impermissibly rounded the hours worked by Plaintiff and other aggrieved employees in Defendants' favor resulting, over a period of time, in a failure to properly compensate Plaintiff and other non-exempt employees for all hours worked, including on occasions where they worked over 8.0 hours in a workday and/or 40.0 hours in a workweek. As a result of Defendants' timekeeping policies/practices, Plaintiff and other aggrieved employees were not compensated for all minimum and overtime wages earned.

13. Defendants' meal period policies/practices failed to provide Plaintiff and other aggrieved employees with legally compliant meal periods. Specifically, Defendants failed to relieve Plaintiff and other aggrieved employees of all work-duties during meal periods and required Plaintiff and other aggrieved employees to enter into on-duty meal period agreements. Assuming, *arguendo*, that Plaintiff and Defendants entered into lawful on-duty meal period agreements, such agreements inherently concede that the nature of Plaintiff and other aggrieved employees' work precluded lawful rest periods. On those occasions when Plaintiff and other aggrieved employees were not provided with all the legally-compliant meal periods to which they

1 were entitled, Defendants failed to compensate Plaintiff and other aggrieved employees with the
2 required meal period premium(s) for each workday there was a meal period violation as mandated
3 by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant
4 time period, Defendants maintained no mechanism for the payment of meal period premium
5 payments as required by Labor Code § 226.7, in the event that a legally compliant meal period
6 was not provided to their non-exempt employees.

7 14. Defendants' rest period policies/practices failed to authorize and permit Plaintiff
8 and other aggrieved employees to take all legally compliant rest periods. Specifically,
9 Defendants' rest period policies and/or practices failed to relieve Plaintiff and other aggrieved
10 employees of all work during required rest periods due to the purported on-duty nature of their
11 work. On those occasions when Plaintiff and other aggrieved employees were not provided with
12 all legally-compliant rest periods to which they were entitled, Defendants failed to compensate
13 Plaintiff and other aggrieved employees with the required rest period premium(s) for each
14 workday there was a rest period violation as mandated by Labor Code § 226.7. Upon information
15 and belief, during at least a portion of the relevant time period, Defendants maintained no
16 mechanism for the payment of rest period premium payments as required by Labor Code § 226.7,
17 in the event that Defendants failed to authorize and permit all lawful rest periods to be taken.

18 15. Defendants also required Plaintiff and other aggrieved employees to use their
19 personal cellular phones and personal vehicles for work-related purposes, including but not
20 limited to, clocking in and out of their shifts through a smartphone application, and using their
21 personal vehicles to travel to and from patients' homes. Although Defendants required Plaintiff
22 and other aggrieved employees to use their personal cell phones and vehicles for work-related
23 purposes, Defendants failed to reimburse them for these work-related expenses.

24 16. As a result of Defendants' failure to pay all overtime and minimum wages and
25 meal and rest period premiums, Defendants maintained inaccurate payroll records, issued
26 inaccurate wage statements to Plaintiff and other aggrieved employees, and failed to pay Plaintiff
27 and other aggrieved employees all wages owed at the time of their respective separations of
28 employment with Defendants.

1 17. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved
2 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
3 violations discussed herein.

4 **FIRST CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
8 fully set forth herein.

9 19. Defendants have committed several Labor Code violations against Plaintiff and
10 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
11 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
12 representative action against Defendants to recover the civil penalties due to Plaintiff, other
13 aggrieved employees, and the State of California according to proof, including, but not limited
14 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
15 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
16 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
17 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
18 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
19 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
20 initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
21 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
22 subsequent violation per employee per pay period for those violations of the Labor Code for
23 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 24 a. Failing to pay Plaintiff and other aggrieved employees all earned overtime
25 compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
26 b. Failing to pay minimum wages for all hours worked to Plaintiff and other
27 aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2,
28 and 1197;

- c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary expenditures incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;
- h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

20. On or about March 10, 2020, Plaintiff notified Defendant No Ordinary Moments, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699.

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for himself, the State of California, and for
3 all others on whose behalf this suit is brought against Defendants, as follows:

4 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
6 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
7 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
8 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
9 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
10 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
11 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
12 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
13 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
14 violation and \$200 for each subsequent violation per employee per pay period for those violations
15 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
16 violations identified in Paragraph 19 (a)-(i);

17 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
18 2699(g) and Code of Civil Procedure § 1021.5; and

19 3. For such other and further relief the Court may deem just and proper.

20
21 Dated: May 15, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

22
23 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff