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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Joshua Teixeira, Deputy
\$435 PAID

Attorneys for Plaintiff Jaclyn L. Kuenzinger

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF STANISLAUS

**JACLYN L. KUENZINGER, as proxy for
the California Labor and Workforce
Development Agency,**

Plaintiff,

vs.

**DOCTORS MEDICAL CENTER
MODESTO, INC.; and DOES 1-20
inclusive,**

Defendants.

Case No.: CV-20-002799

**REPRESENTATIVE COMPLAINT FOR
PENALTIES FOR:**

- 1. PRIVATE ATTORNEYS GENERAL
ACT CLAIM FOR VIOLATIONS OF
LABOR CODE §§ 226(a)(7), 226.7, 512,
1198.**

INTRODUCTION

This is a representative action for penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code sections 2699 *et seq.*) against Defendant Doctors Medical Center Modesto, Inc., ("Defendant") and DOES 1-20 (collectively "Defendants"), for violations of the Labor Code. As set forth with greater particularity below, Plaintiff Jaclyn L. Kuenzinger ("Plaintiff or "Keunzinger"), having exhausted administrative remedies as required by Labor Code section 2699.3, and acting as proxy for the California Labor and Workforce Development Agency, seeks to recover civil penalties on her behalf and on behalf of Defendants' other current and former California employees.

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2. Venue is proper pursuant to Government Code § 12965(b) because the claims at issue arise out of acts and/or omissions that occurred in Stanislaus County.

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PAGA EXHAUSTION

7. The Private Attorneys General Act ("PAGA"), as set forth at California Labor Code § 2698 *et seq.*, is and at all times relevant herein was applicable to Plaintiff's employment with Defendants.

8. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code § 2699(a).

9. Pursuant to PAGA, an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Labor Code § 2699(c).

10. Plaintiff Keunzinger was employed by Defendants when the alleged violations were committed against her. Plaintiff is therefore an aggrieved employee as defined by Labor Code § 2699(c). Other current and former employees are also aggrieved employees in that one or more of the alleged violations were committed against them during their time of employment with Defendants.

11. Pursuant to Labor Code § 2699(a), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code for a violation of that section. When the Labor Code does not provide a civil penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period. Lab. Code § 2699(f).

12. Pursuant to California Labor Code § 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

1 13. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Plaintiff,
2 may pursue a civil action arising under PAGA after the following requirements have been met:

3 a. The aggrieved employee shall give written notice by online filing to the
4 LWDA and by certified mail to the employer (hereinafter “Employee’s Notice”)
5 of the specific provisions of California Labor Code alleged to have been violated,
6 including the facts and theories to support the alleged violations;

7 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
8 employer and the aggrieved employee by certified mail that it does not intend to
9 investigate the alleged violation within 60 days of the postmark date of the
10 Employee’s Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does
11 not provide notice with 65 calendar days of the postmark date of the Employee’s
12 Notice, the aggrieved employee may commence a civil action pursuant to
13 California Labor Code § 2699 to recover civil penalties in addition to any other
14 penalties to which the employee may be entitled.

15 c. For all alleged violations not enumerated in Labor Code § 2699.5, the
16 employer is given thirty-three (33) days to cure and notify the aggrieved
17 employee by certified mail that the violation has been cured. If the violation is
18 not cured, the aggrieved employee may commence a civil action pursuant to
19 California Labor Code § 2699 to recover civil penalties in addition to any other
20 penalties to which the employee may be entitled.

21 14. On April 20, 2020, Plaintiff Keunzinger provided written notice by certified mail
22 to Defendants and by online filing to the LWDA of the specific provisions of the Labor Code
23 alleged to have been violated, including the facts and theories to support the alleged violations.
24 A true and correct copy of Plaintiff’s LWDA notice is attached hereto as **Exhibit 1** and
25 incorporated by this reference as though fully set forth herein.

26 15. As of the date of this complaint, which is more than sixty-five (65) days after the
27 April 20, 2020 letter, the LWDA has not responded to Plaintiff’s notification or otherwise
28 indicated an intention to investigate her claims. Plaintiff has therefore satisfied the

1 administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover
2 penalties against Defendants, in addition to other remedies, for violations of California Labor
3 Code.

4 FACTUAL ALLEGATIONS

5 16. Plaintiff Kuenzinger was hired by Defendant to work as a sterile processing
6 technician on June 7, 2019.

7 17. At all time relevant herein, Plaintiff Keunzinger was a non-exempt, California
8 employee of Defendants.

9 18. The final wage statement issued by Defendants to Kuenzinger for pay period
10 number 25, for work from November 24, 2019 to December 7, 2019, identified Kuenzinger by
11 her full social security number.

12 19. Labor Code § 226 requires employers to furnish to its employees accurate
13 itemized wage statements that state, *inter alia*, “the name of the employee **and only** the last four
14 digits of his or her social security number or an employee identification number other than a
15 social security number.” *Labor Code § 226(a)(7)*.

16 20. The final wage statement issued to Kuenzinger clearly violates this requirement as
17 it states her entire social security number.

18 21. On information and belief, Defendants have at all relevant times herein, engaged
19 in a pattern and practice of issuing non-compliant wage statements with the final payment for
20 wages made to their employees.

21 22. During Kuenzinger’s employment, and at all relevant times herein, she and other
22 former and current employees of Defendants were forced to work in working conditions that
23 were intolerable due to a lack of seating.

24 23. Kuenzinger, while pregnant, was told by her Supervisor, Estive Simonghaterchi,
25 that she and others would not be permitted to sit while preparing trays for use in medical
26 procedures.

27 24. The use of seating would not in any way impair the process of preparing trays and
28 easily could have been made available to employees.

1 25. Section 14(A) of Industrial Welfare Commission Order 201001, provides that
2 “[a]ll working employees shall be provided with suitable seats when the nature of the work
3 reasonably permits the use of seats.”

4 26. It is a violation of Labor Code section 1198 for Defendants to have employed
5 Kuenzinger and their other current and former California employees under conditions prohibited
6 by applicable wage orders. *Labor Code § 1198.*

7 27. During Keunzinger’s employment, Defendants failed to furnish her with all meal
8 periods required by law, in violation of Labor Code sections 226.7 and 510.

9 28. Kuenzinger was, during her employment, paid for 10 missed or untimely meal
10 periods. Other former and current employees likewise were paid for missed or untimely meal
11 periods.

12 29. Defendants therefore have acknowledged some of these failures by paying an
13 additional hour of pay, which, pursuant to the California Supreme Court in *Kirby v. Immoos Fire*
14 *Protection, Inc.* (2012) 53 Cal.4th 1244, “does not excuse a section 226.7 violation” in an action
15 brought pursuant to the PAGA.

16 **FIRST CAUSE OF ACTION**
17 **PRIVATE ATTORNEYS GENERAL ACT CLAIM FOR VIOLATIONS OF LABOR**
18 **CODE §§ 226(a)(7), 226.7, 512, 1198**
19 **(Labor Code §§2698 *et seq.*)**
20 **Against All Defendants**

21 30. Plaintiff hereby realleges and incorporates by reference each and every allegation
22 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with
23 the allegations of this cause of action.

24 31. As set forth above, Plaintiff Keunzinger has completed the prerequisite notice
25 process to the LWDA to act as its proxy to prosecute Labor Code violations by Defendants on
26 her behalf and on behalf of other current and former employees.

27 32. As set forth above, Defendants have violated numerous Labor Code provisions,
28 including §§ 226(a)(7), 226.7, 512, and 1198.

33. Each violation as to any current or former employee results in a civil penalty assessment as applicable. In the case of violations of Labor Code § 226, the operative civil penalty is provided by Labor Code § 226.3, which is \$250 per violation. For violations of Labor Code §§ 226.7 and 512, the applicable civil penalty is set forth at Labor Code § 558(a), which provides as a civil penalty of \$50 per employee per pay period for an initial violation or \$100 per employee per pay period for a subsequent violation¹. For violations of Labor Code § 1198, , the default penalty provision of Labor Code § 2699(f) applies (\$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.)

34. On information and belief, Defendants have not changed their unlawful practices; hence, ongoing civil penalties apply until such time as it stops its unlawful practices.

35. Wherefore, Plaintiff Keunzinger seeks civil penalties pursuant to PAGA as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment from this Court as follows:

1. For civil penalties, including but not limited to those available under Labor Code §§ 226.3, 558(a) exclusive of the underpaid wages portion of any such penalties, and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

¹ Plaintiff Keunzinger does **not** seek to recover the "underpaid wages" portion of the Labor Code section 558 penalty in this action.

1 **DATED:** June 26, 2020

MAYALL HURLEY P.C.

2
3 By

4 WILLIAM J. GORHAM III
5 NICHOLAS F. SCARDIGLI
6 VLADIMIR J. KOZINA
Attorneys for Plaintiff
JACLYN L. KUENZINGER

Exhibit 1

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253

FAX (209) 473-4818
TELEPHONE (209) 477-3833
WWW.MAYALLLAW.COM

April 20, 2020

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/260>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Doctors Medical Center Modesto, Inc.
1441 Florida Ave.
Modesto, CA 95350

Re: JacLyn Kuenzinger

To Whom It May Concern:

This firm represents JacLyn Kuenzinger relating to her former employment as a sterile processing technician for Doctors Medical Center Modesto, Inc. ("Employer"). Ms. Kuenzinger's employment with Employer was from June 7, 2020, until her employment was terminated in December of 2019. In accordance with California Labor Code § 2699.3, this letter shall serve as Ms. Kuenzinger's written notice regarding the following violations, and facts and theories supporting the violations, on her behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>. The \$75.00 filing fee pursuant to Labor Code § 2699.3 is being sent concurrently by separate letter.

The final wage statement issued by Employer to Ms. Kuenzinger for pay period number 25, for work from November 24, 2019 to December 7, 2019, identified Ms. Kuenzinger by her full social security number. Labor Code § 226 requires employers to furnish to its employee's accurate itemized wage statements that state "the name of the employee *and only* the last four digits of his or her social security number or an employee identification number other than a social security number." *Labor Code § 226(a)(7)*. The final wage statement issued to Ms. Kuenzinger clearly violates this

Labor and Workforce Development Agency
Doctors Medical Center Modesto, Inc.
Re: JacLyn Kuenzinger
April 20, 2020
Page 2 of 3

requirement as it states her entire social security number. It is believed that Employer has a pattern and practice of issuing non-compliant wage statements with the final payment for wages it makes to its employees. Because this violation implicates the privacy and security of Ms. Kuenzinger, a redacted version of the non-compliant wage statement is attached hereto as **Exhibit 1**. The penalty for each such violation is \$250 per employee, per violation, under Labor Code § 226.3.

During Ms. Kuenzinger's employment, she and other former and current employees of Employer were forced to work in working conditions that were intolerable due to a lack of seating. Ms. Kuenzinger, while pregnant, was told by her Supervisor, Estive Simonghaterchi, that she and others would not be permitted to sit while preparing trays for use in medical procedures. The use of seating would not in any way impair the process of preparing trays and easily could have been made available to employees. Section 14(A) of Industrial Welfare Commission Order 201001, provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Further, it is a violation of Labor Code section 1198 for Employer to have employed Ms. Kuenzinger and other current and former California employees under conditions prohibited by applicable wage orders. *Labor Code § 1198*. The penalty for this violation is \$100 per pay period per employee effected. *Labor Code § 2699(f)*.

In addition, Employer must pay civil penalties under Private Attorneys General Act of 2004 ("PAGA") due to missed or untimely meals. As evidence by **Exhibit 1**, Ms. Kuenzinger was, during her employment, paid for 10 missed or untimely meal periods. Other former and current employees likewise were paid for missed or untimely meal periods. Employer therefore has acknowledged some of these failures by paying an additional hour of pay, which, pursuant to the California Supreme Court in *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, "does not excuse a section 226.7 violation" in an action brought pursuant to the PAGA. Consequently, Defendants have violated Labor Code §§ 226.7 and 512 as to Ms. Kuenzinger and the other aggrieved employees. The penalty for this violation is \$100 per pay period per employee effected. *Labor Code § 2699(f)*.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Kuenzinger intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a

Labor and Workforce Development Agency

Doctors Medical Center Modesto, Inc.

Re: JacLyn Kuenzinger

April 20, 2020

Page 3 of 3

proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By

WILLIAM J. GORHAM III

cc: client

EXHIBIT 1

DRS MED CTR MODESTO, INC
DRS MED CTR MODESTO
1441 FLORIDA AVE
MODESTO CA 95350

Register
Check Date: 12/13/2019
Period: 11/24/2019 to 12/07/2019
Pay Period: 25

Page: 1,289

Group: 930

Processed 12/10/2019 09:00:54 PM

Earnings		Deductions		Taxes		Net Pay
Description	Rate	Hours/Units	Amount	Description	Amount	Amount
KUENZINGER, JACLYN L. EMP ID : 000934920 DEPT : 705100 Payment Type: Adj Payoff						
SSN#:	2407 Terminated	STATUS : F		HIRE DT : 06/17/2019		
EMP#:	2407 Rate:	22.0202	W-4 Information: Single	0	\$0.00 Add'l	Check No: M9303797
Current:	REGULAR	53.75	1,183.58	EMP LIFE	0.83 FICA-MED	50.21
	SHIFT1	53.75	40.31	UNDUES	26.97 FICA-SS	214.66
	MISNEAL	1.00	22.02	INIT FEE	6.25 FED TAX	509.53
	LWP	7.50	165.15		CA State	110.20
	PTO PAY	93.60	2,061.09		CA Disab	14.01
	DENTAL		4.03-			
	VISION		5.89-			
	401K		276.01-			
Current Totals:		209.60	3,186.22		34.05	898.61
Current Gross:			3,186.22			2,253.56

Manual check

KUENZINGER, JACLYN L. EMP ID : 000934920 DEPT : 705100 Payment Type: Terminated						
SSN#:	622-54-2407 Terminated	STATUS : F		HIRE DT : 06/17/2019		
EMP#:	622-54-2407 Rate:	22.0202	W-4 Information: Single	0	\$0.00 Add'l	
YTD:	REGULAR	74.00	1,629.50	EMP LIFE	8.30 FICA-MED	328.33
	SHIFT1	521.00	390.76	UNDUES	250.47 FICA-SS	1,403.88
	EDUCATE	11.50	246.22	INIT FEE	56.25 FED TAX	2,358.62
	ORIENT	821.75	17,987.72		CA State	324.14
	ORN 1.5	1.25	41.29		CA Disab	205.82
	MISNEAL	10.00	220.20			
	LWP	7.50	165.15			
	PTO PAY	93.60	2,061.09			
	DENTAL		40.30-			
	VISION		58.90-			
	FLSAOTW2	1.25	0.46			
	401K		1,613.82-			
YTD Totals:		1,541.85	21,029.37		315.02	4,620.79
			21,029.37			16,093.56