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RICHEL MARK RODRIGUEZ FIGUERA

IN THE SUPERIOR COURT OF CALIFORNIA**COUNTY OF LOS ANGELES, CENTRAL DISTRICT**RICHEL MARK RODRIGUEZ FIGUERA, an
individual,

Plaintiff,

vs.

ERG HOME HEALTH PROVIDER, INC., a
California corporation, MARIA ISABEL
BELZUNCE, an individual, and DOES 1 through
20 inclusive,

Defendants.

Case No.: **20STCV22705****COMPLAINT FOR DAMAGES FOR:**

- 1. WILLFUL FAILURE TO PAY WAGES
IN VIOLATION OF LAB. CODE §§ 201-
203;**
- 2. FAILURE TO PAY MINIMUM WAGE
IN VIOLATION OF LAB. CODE § 1197;**
- 3. FAILURE TO FURNISH ITEMIZED
WAGE STATEMENTS IN VIOLATION
OF LAB. CODE § 226;**
- 4. FAILURE TO TIMELY PAY WAGES IN
VIOLATION OF LAB. CODE § 204;**
- 5. CIVIL PENALTIES IN VIOLATION OF
CAL. LAB. CODE § 2699, ET SEQ.;**

DEMAND OVER \$25,000**[DEMAND FOR JURY TRIAL]**

1 Plaintiff RICHIE MARK RODRIGUEZ FIGUERA is informed and believes and thereon alleges
2 as follows:

3 **PARTIES, VENUE AND JURISDICTION**

4 1. Plaintiff RICHIE MARK RODRIGUEZ FIGUERA was at all times relevant hereto a
5 resident of Los Angeles, CALIFORNIA.

6 2. At all relevant times herein, Defendant ERG HOME HEALTH PROVIDER, INC.
7 (hereinafter, "ERG") was a Corporation with its principal place of business in Glendale, California.

8 3. At all times relevant herein, Defendant MARIA ISABEL BELZUNCE was the Chief
9 Executive Officer of Defendant ERG HOME HEALTH PROVIDER, INC. and was a resident of
10 California.

11 4. The true names and capacities, whether individual, corporate, associate, or otherwise, of
12 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
13 these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this Complaint to
14 insert the true names and capacities of these Defendants when they become known to Plaintiff. Plaintiff
15 is informed and believes and based thereupon alleges, that each of the fictitiously named Defendant is
16 responsible for the wrongful acts alleged herein and are therefore liable to Plaintiff as alleged hereinafter.

17 5. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
18 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
19 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant, and each
20 of them, and in doing the things alleged herein, were acting at least in part within the course and scope of
21 said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or joint
22 venture and with the permission and consent of each of the other Defendant.

23 6. Plaintiff is informed and believes and based thereupon alleges, that Defendant, including
24 those defendants named as DOES 1-20 acted in concert with one another to commit the wrongful acts
25 alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts
26 alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and based thereupon
27 alleges, that Defendant, including those defendants named as DOES 1-20 formed and executed a
28 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with

1 all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually
2 causing Plaintiff's harm.

3 7. Whenever and wherever reference is made in this Complaint to any act or failure to act by
4 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or
5 failures to act by each Defendant acting individually, jointly and severally.

6 **FACTUAL ALLEGATIONS**

7 8. RICHIE MARK RODRIGUEZ FIGUERA worked as a Scheduler for Defendant ERG
8 HOME HEALTH PROVIDER, INC. from approximately September 10 to September 23, 2019.

9 9. Due to a competing job offer, after his brief tenure with ERG, Mr. Figuera decided not to
10 continue his employment with ERG. Mr. Figuera promptly informed his managers that he had accepted a
11 new job elsewhere, and therefore he would be ending his employment with ERG. Mr. Figuera also told
12 his managers at ERG how much he enjoyed and appreciated his brief work stay with ERG.

13 10. Despite his prompt notification of his resignation, ERG did not pay Mr. Figuera within 72
14 hours of his last day at work, as required by the California Labor Code, section 202. Nor has ERG ever
15 paid Mr. Figuera. He has repeatedly requested payment for the time he worked, but he has not been paid.

16 11. On September 26, 2019, Mr. Figuera sent a message to ERG manager Sebastian Beto
17 requesting payment, to which Mr. Figuera received no reply. Mr. Figuera made several inquiries and
18 requests thereafter, to no avail.

19 12. On February 27, 2020, Mr. Figuera sent a message to ERG Chief Executive Officer Isabel
20 Belzunce, requesting payment, and expressing concern that he would have to hire a lawyer to get his
21 rightful pay. But nonetheless, ERG still did not pay Mr. Figuera.

22 13. Because ERG has continuously refused to pay Mr. Figuera, despite his requests, ERG's
23 failure to pay can only be described as willful, which is so defined in California law as follows: "A willful
24 failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally
25 fails to pay wages to an employee when those wages are due." Cal. Code Regs. tit. 8 § 13520. This practice
26 is in violation of California Labor Code sections §202, 203, 204, 226, 1182.12, 1194 and 1194.2 for the
27 reasons explained below.

1 **FIRST CAUSE OF ACTION**

2 **WILLFUL FAILURE TO PAY WAGES IN VIOLATION OF**

3 **LABOR CODE §§ 201-203**

4 **(AGAINST ALL DEFENDANTS)**

5 14. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
6 fully set forth herein.

7 15. If an employee not having a written contract for a definite period quits his or her
8 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the
9 employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is
10 entitled to his or her wages at the time of quitting. If an employer willfully fails to pay, without abatement
11 or reduction, in accordance with Labor Code Sections 201 and 202, any wages of an employee who is
12 discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof
13 at the same rate until paid or until an action thereof is commenced; but the wages shall not continue for
14 more than 30 days.

15 16. Any employer or other person acting on behalf of an employer, who violates, or causes to
16 be violated, any provision regulating minimum wages or hours and days of work in any order of the
17 Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6,
18 1194, or 2802, may be held liable as the employer for such violation. For purposes of this section, the term
19 "other person acting on behalf of an employer" is limited to a natural person who is an owner, director,
20 officer, or managing agent of the employer.

21 17. As described above, Mr. Figuera decided to end his employment with ERG HOME
22 HEALTH PROVIDER, INC., and he gave notice to his employer of the termination of his employment
23 there. However, ERG did not pay Mr. Figuera within 72 hours of his last day at work, as required by the
24 California Labor Code, section 202. Nor has ERG ever paid Mr. Figuera, despite his repeated requests
25 that it do so.

26 18. Plaintiff was not exempt from the requirements of Labor Code §§ 201-203.

27 19. At no time since Plaintiff's separation of employment did Defendant pay him wait-time
28

1 penalties as required by Labor Code § 203.

2 20. At all times relevant herein, Defendant MARIA ISABEL BELZUNCE violated and caused
3 to be violated Labor Code section 203 because she implemented and/or permitted a company policy that
4 fails to pay employees' due wages upon the separation of their employment.

5 21. As a direct and proximate result of Defendants' willful failure to pay Plaintiff's wages upon
6 his discharge, Plaintiff incurred wait-time penalties in an amount equal to his daily rate of pay over the 30
7 day statutory maximum period in an amount subject to proof at trial.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY APPLICABLE MINIMUM WAGE**

10 **IN VIOLATION OF LABOR CODE § 1197**

11 **(AGAINST ALL DEFENDANTS)**

12 22. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
13 fully set forth herein.

14 23. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the
15 commission or by any applicable state or local law is unlawful.

16 24. Here, by failing to pay Mr. Figuera for any of the time he worked, Defendants failed and
17 refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Industrial Welfare
18 Commission Order No. 4-2001 and California Labor Code §§ 1182.12, 1194, 1194.2 and 1197.

19 25. Since January 1, 2019, the minimum wage applicable to Plaintiff was \$12 per hour.

20 26. Defendant's failure to pay the legal minimum wage to Plaintiff as alleged herein is
21 unlawful and creates entitlement, pursuant to Labor Code §1194, to recovery by Plaintiff in a civil action
22 for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between
23 the straight time compensation paid and applicable minimum wage, including interest thereon.

24 27. Pursuant to Labor Code §1194, Plaintiff is entitled to an award of reasonable attorneys'
25 fees and costs incurred in this action.

26 28. At all times relevant herein, Defendant MARIA ISABEL BELZUNCE violated and caused
27 to be violated Labor Code section 1194 because she implemented and/or permitted a company policy that
28

1 fails to pay employees' earned wages.

2 29. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
3 damages in an amount equal to the minimum wages unlawfully unpaid to be determined at trial.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PROVIDE WAGE STATEMENTS**

6 **IN VIOLATION OF LABOR CODE § 226**

7 **(AGAINST ALL DEFENDANTS)**

8 30. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
9 fully set forth herein.

10 31. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
11 exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross
12 wages, total deductions net wages earned and name of the employer. An employer who violates these code
13 sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00
14 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for
15 each subsequent pay period, up to a statutory maximum of \$4,000.00.

16 32. At all times relevant herein, Defendants violated and caused to be violated Labor Code
17 section 226 because they failed to furnish Plaintiff with itemized wage statements.

18 33. Based on Defendant's conduct as alleged herein, Defendants are liable for damages and
19 statutory penalties pursuant to Labor Code §226, as well as attorneys' fees and costs.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO TIMELY PAY WAGES IN VIOLATION OF**

22 **LABOR CODE § 204**

23 **(AGAINST ALL DEFENDANTS)**

24 34. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
25 fully set forth herein.

26 35. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
27 fully set forth herein.

28 36. "All wages ... earned by any person in any employment are due and payable twice during

1 each calendar month, on days designated in advance by the employer as the regular paydays.” Cal. Lab.
2 Code § 204(a). “The requirements of this section shall be deemed satisfied by the payment of wages for
3 weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
4 following the close of the payroll period.” Cal. Lab. Code § 204(d).

5 37. As stated above, by willfully failing to provide payment to Mr. Figuera, ERG also violated
6 Cal. Lab. Code § 204, which by default requires employers to pay employees at least “twice during each
7 calendar month” and/or within seven days following the close of the pay period.

8 38. According to the Labor Code § 210, an employer who fails to pay the wages of each
9 employee as provided in section 204 shall be subject to a penalty, (1) For any initial violation, one hundred
10 dollars (\$100) for each failure to pay each employee; and (2) for each subsequent violation, or any willful
11 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent
12 of the amount unlawfully withheld.

13 39. As a result of the foregoing, Plaintiff is entitled to recover penalties under Labor Code §
14 210.

15 **FIFTH CAUSE OF ACTION**

16 **CIVIL PENALTIES IN VIOLATION OF LABOR CODE § 2699, ET SEQ.**

17 **(AGAINST ALL DEFENDANTS)**

18 40. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
19 fully set forth herein.

20 41. Under Labor Code §2699, et seq., Plaintiff, as a aggrieved employee, may bring an action
21 against defendants, on behalf of himself and other current or former employees, seeking statutory civil
22 penalties for defendants’ violations of various provisions of the California Labor Code.

23 42. Plaintiff was an aggrieved employee within the meaning of California Labor Code §2699,
24 et seq. because he was not paid within 72 hours of his last day at work, as required by the Labor Code,
25 section 202; he was not timely paid wages, in violation of Cal. Lab. Code § 204; was not paid minimum
26 wage, in violation of Labor Code §§ 1182.12, 1194, 1194.2 and 1197; and was not provided wage
27 statements, in violation of Cal. Lab. Code § 226.

28 43. Plaintiff further alleges that Defendants failed to pay other employees within 72 hours of

1 their separation of employment in violation of Labor Code §§ 202-203, failed to pay them minimum wage
2 for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2 and 1197, failed to timely pay
3 them wages in violation of Lab. Code § 204 and failed to furnish employees with itemized wage statements
4 in violation of Lab. Code § 226.

5 44. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and
6 Workforce Development Agency regarding any agency intent to pursue an action against Defendants.

7 45. As a direct and proximate result of Defendants' California Labor Code violations as set
8 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for
9 the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation,
10 pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty,
11 and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

12 46. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
13 civil penalties.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
16 according to proof as follows:

17 1. For interest at the same rate as judgments in civil actions, accruing from the date on which
18 Plaintiff ended his employment with ERG;

19 2. For all reasonable costs, including attorney's fees incurred by Plaintiff's enforcement of
20 the rights granted by Labor Code §§ 510 and 1194;

21 3. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12,
22 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. Order No. 4-2001 in an amount subject
23 to proof;

24 4. For liquidated damages pursuant to Labor Code §1194.2 in an amount subject to proof,
25 plus interest;

26 5. For prejudgment interest on each of the foregoing at the legal rate from the date the
27 obligation became due through the date of judgment in this matter;

28 6. For civil and statutory penalties and reasonable attorney's fees and costs pursuant to Labor

1 Code §§ 226 and 2699, et seq.;

2 7. For statutory and/or civil penalties or damages pursuant to Labor Code §226.3 in the
3 amount according to proof;

4 8. For waiting time penalties pursuant to Labor Code §§201-203 in the amount according to
5 proof;

6 9. For civil and statutory penalties and damages pursuant to Labor Code §558 (a), § 1197.1
7 and §226 (e).

8 10. For costs of suit;

9 11. For post-judgment interest; and

10 12. For any other relief that is just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial by jury on all issues.

13
14 **PIMENTEL LAW, P.C.**

15
16 Dated: June 16, 2020

17 By: 
18 Bruce T. Murray, Esq.
19 Attorney for Plaintiff 