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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANDREA PICOS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SRG OPERATING, INC., a Delaware
corporation; and DOES 1 through 100,
Defendants.

Case No.: 20STCV29291

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Andrea Picos (“Plaintiff”), on behalf of herself, the State of California, and all
2 other aggrieved employees, hereby brings this Representative Action Complaint (“Complaint”)
3 against Defendant SRG Operating, Inc., a Delaware corporation; and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself, the State of California, and all other aggrieved
7 employees, hereby brings this representative action Complaint for recovery of civil penalties
8 under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* This
9 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
10 amount in controversy exceeds this Court’s jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to California Code of Civil
13 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
14 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
15 an agent or agents within the County of Los Angeles, and/or otherwise are found within the
16 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
17 service of process.

18 **PARTIES**

19 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
20 Plaintiff was, and currently is, a California resident. During the one year immediately preceding
21 Plaintiff’s providing notice to Defendants and the Labor & Workforce Development Agency
22 (“LWDA”) of the Labor Code violations described herein, and within the statute of limitations
23 periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as
24 a non-exempt employee.

25 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding Plaintiff’s providing notice to Defendants and the Labor & Workforce
27 Development Agency (“LWDA”) of the Labor Code violations described herein, and continuing
28 to the present, Defendants did (and continue to do) business by owning and operating senior living

1 centers, and employed Plaintiff and other aggrieved non-exempt employees within Los Angeles
2 County and the state of California and, therefore, were (and are) doing business in Los Angeles
3 County and the State of California.

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

12 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

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

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all other
25 aggrieved employees.

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[illegible]

10. During Plaintiff's employment with Defendants, Defendants maintained an unlawful timekeeping policy/practice that failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, during the relevant time period, Defendants regularly, systematically, and impermissibly rounded and/or truncated the hours worked by Plaintiff and non-exempt employees by maintaining a policy/practice that rounded Plaintiff's and other non-exempt employees' timekeeping entries in 15-minute increments, which resulted, over a period of time, in Defendants' failure to properly compensate Plaintiff and other non-exempt employees for all hours worked, and deprived them of all minimum and overtime wages earned.

12. Defendants failed to provide Plaintiff and other aggrieved employees with all legally compliant meal periods due to Defendants' meal period policies/practices which failed to provide Plaintiff and other aggrieved employees with a duty-free, uninterrupted 30-minute meal period before the end of the fifth hour of work. Specifically, Defendants' policies/practices required Plaintiff and other aggrieved employees to care for approximately 200 residents without

1 providing adequate staffing. As a result, Plaintiff and other aggrieved employees' meal periods
2 were often late because work demands prevented Plaintiff and other aggrieved employees from
3 taking a meal period until the sixth, and/or sometimes, seventh hour of work. Additionally,
4 Defendants' policies/practices regularly failed to relieve Plaintiff and other aggrieved employees
5 from all of their work duties during their meal periods, because upon information and belief,
6 Defendants required them to remain accessible by short-range radio phones (also known as
7 "walkie-talkies") during their meal periods. Moreover, Plaintiff and other aggrieved employees'
8 meal periods were often "short" because Defendants' policies/practices often required them to
9 respond to resident calls prior to the conclusion of their 30-minute meal periods. Further,
10 Defendants' meal period policies/practices failed to provide Plaintiff and other aggrieved
11 employees with a second 30-minute meal period on occasions where they work over 10.0 hours
12 in a workday. On those occasions when Plaintiff and other aggrieved employees were not
13 provided with all legally-compliant meal periods to which they were entitled, Defendants
14 frequently failed to compensate Plaintiff and other aggrieved employees with meal period
15 premiums mandated by Labor Code § 226.7.

16 13. Moreover, although Defendants sometimes paid Plaintiff meal period premiums,
17 they were not paid at Plaintiff's "regular rate" of pay as required under Labor Code § 226.7.
18 Specifically, and as explained above, Defendants failed to properly calculate Plaintiff's and other
19 aggrieved employees' "regular rate" of pay when they received Incentive Pay. Thus, on those
20 occasions when Plaintiff and other aggrieved employees received Incentive Pay and also received
21 a meal period premium in the corresponding pay period, Defendants failed to pay a meal period
22 premium at the "regular rate," as required by Labor Code § 226.7, thereby causing Plaintiff and
23 other aggrieved employees to be underpaid for their required meal period premium wages when
24 they were paid meal period premium wages.

25 14. Defendants also failed to authorize and permit Plaintiff and other aggrieved
26 employees to take all legally compliant rest periods. As stated above, Plaintiff and other aggrieved
27 employees were required to care for approximately 200 residents. Given this requirement as well
28 as Defendants' practice of understaffing its facilities, Plaintiff and other aggrieved employees

1 were often prevented from being relieved of all work duties and were often required, in practice,
2 to work through their rest periods. Defendants' policies/practices also failed to relieve Plaintiff
3 and other aggrieved employees from all of their work duties during their rest periods because
4 Defendants required them to remain accessible by short-range radio phones during their rest
5 periods. Moreover, Plaintiff and other aggrieved employees' rest periods were often "short"
6 because Defendants' policies/practices often required them to respond to resident calls prior to
7 the conclusion of their 10-minute rest periods. Despite failing to authorize and permit Plaintiff
8 and other aggrieved employees to take all rest periods to which they are entitled, Defendants
9 maintained no mechanism for the payment of rest period premium payments as required by Labor
10 Code section 226.7.

11 15. Defendants also failed to reimburse Plaintiff and other aggrieved employees for
12 all reasonable and necessary work expenditures, including but not limited to the use of personal
13 cell phones to communicate with management for work-related purposes. Although Defendants
14 required Plaintiff and other aggrieved employees to use their personal cell phone for work-related
15 purposes, including to answer questions regarding resident paperwork, Defendants failed to
16 reimburse Plaintiff and other aggrieved employees for a reasonable portion of their monthly cell
17 phone bill in violation of California law. *See Cochran v. Schwan's Home Service, Inc.*, 228
18 Cal.App.4th 1137 (2014).

19 16. As a result of Defendants' failure to pay overtime and minimum wages, as well as
20 meal and rest period premium wages, Defendants maintained inaccurate payroll records, issued
21 inaccurate wage statements, and failed to pay Plaintiff and other aggrieved employees all wages
22 owed at their respective separation from employment.

23 17. Based on the foregoing, Plaintiff seeks to represent herself, the State of California,
24 and all aggrieved employees, as defined by Labor Code § 2699(c).

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FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

19. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other similarly aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, including but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Labor Code § 226, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees all legally required meal periods, and failure to pay meal period premium wages to Plaintiff and other

aggrieved employees at the regular rate of compensation, in violation of Labor Code §§ 226.7, 512, 558, and 1198;

d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all legally required rest periods, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;

e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements, in violation of Labor Code § 226;

f. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenses incurred, in violation of Labor Code §§ 1198, 2802, and 2804;

g. Failing to pay Plaintiff and other aggrieved employees all final wages upon their separation of employment, in violation of Lab. 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 Lab. Code § 204; and

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Lab. Code §§ 558 and 1174.

20. On May 28, 2020, Plaintiff notified Defendant SRG Operating, Inc., via certified mail, and the 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 (65) days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, and the LWDA has not indicated that it intends to investigate these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

21. Based on the foregoing, Plaintiff seeks to represent herself and all aggrieved employees, as defined by Labor Code section 2699(c), which includes all current and former non-exempt employees of Defendants who worked in California at any time from May 28, 2019, through the present.

22. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

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

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, the State of California, and other aggrieved employees according to proof pursuant to Labor Code § 2699 (a) and (f) including, including but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Labor Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided;

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

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

Dated: August 3, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff