

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Terry Green

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Attorneys for Plaintiff

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

MICHELLE GUTIERREZ, as an individual
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

NEW HORIZONS: SERVING
INDIVIDUALS WITH SPECIAL NEEDS, a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 20STCV28128

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Michelle Gutierrez (“Plaintiff”), on behalf of herself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendant New
3 Horizons: Serving Individuals with Special Needs, a California Corporation; and DOES 1 to 100,
4 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

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

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

13 **VENUE**

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

18 **PARTIES**

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

24 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
25 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
26 present, Defendants did (and do) business by providing various services for developmentally
27 disabled adults, and employed Plaintiff and other similarly-situated hourly non-exempt
28 employees within the County of Los Angeles and, therefore, were (and are) doing business in the

County of Los Angeles and the State of California.

6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were licensed to do business in California and the County of Los Angeles, and were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 18).

7. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Representative Action Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 18).

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

10. At all times mentioned herein, 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. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the Aggrieved Employees (as defined in Paragraph 18).

[illegible]

12. Plaintiff was employed by Defendants in the position of “Direct Support Professional” from approximately August 2014 until August 2019.

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

15. Plaintiff and other aggrieved employees were unable to take off-duty rest periods as required under California law due to Defendants' chronic understaffing, the need to maintain constant supervision of its clients, and the purported on-duty nature of Plaintiff's and other aggrieved employees' work. On those occasions when Plaintiff and other aggrieved employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Plaintiff and other aggrieved employees with the required rest period premium premiums(s) for each workday in which they experienced a rest period violation as mandated by Cal. Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no mechanism for the payment of rest period premiums as required by Labor Code § 226.7, in the event that a legally compliant rest period was not authorized and permitted to their non-exempt employees.

16. Defendants also failed to reimburse Plaintiff and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, the use of personal cell phones to communicate with management and co-workers for work-related purposes. Although Defendants required Plaintiff and other aggrieved employees to use their personal cell phone for work-related purposes (for example, to check in with management regarding the status of a client), Defendants failed to reimburse Plaintiff and other aggrieved employees for a reasonable portion of their monthly cell phone bill, in violation of California law. See *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014). In addition, Plaintiff and other aggrieved employees were required to use their personal vehicles to, among other things, transport clients to appointments or outings, but Defendants failed to reimburse Plaintiff and other

aggrieved employees for all mileage expenses incurred.

17. During Plaintiff's employment with Defendants, Defendants have issued facially noncompliant wage statements to Plaintiff and other aggrieved employees because, among other things, the wage statements have failed to list the applicable hourly rates for "Split Shift" in effect during the pay period and the corresponding number of hours worked at the "Split Shift" rate, in violation of Labor Code Section 226(a)(9). In addition, as a result of Defendants' failure to pay all overtime wages and failure to pay all meal and rest period premiums, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other aggrieved employees, and failed to pay all wages owed to Plaintiff and other aggrieved employees upon their separation of employment from Defendants.

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

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

20. 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 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, 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) \$250.00 for each initial violation; and \$1,000.00 for each subsequent

violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) \$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 all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. 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, 558, and 1198;
- c. 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, 558, and 1198;
- d. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenditures incurred in violation of Labor Code §§ 1198, 2802, and 2804;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;
- g. 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
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1174, and 1198.

21. On or about May 19, 2020, Plaintiff notified Defendant New Horizons: Serving Individuals with Special Needs 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 20

(a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

22. Plaintiff was compelled to retain the services of counsel to file this court action to protect her 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 she is entitled to receive under California Labor Code § 2699.

PRAYER

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

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 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) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200 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 Labor Code violations identified in Paragraph 20 (a)-(h);

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

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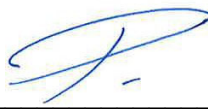
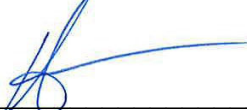
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1 3. For such other and further relief the Court may deem just and proper.

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3 Dated: July 24, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff