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Superior Court of California
County of Los Angeles

JUL 16 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By , Deputy
Steven Drew

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

ADA MIRNA BRISENO, as an individual,
Plaintiff,

vs.

MAR VISTA HOSPICE INC., a California
Corporation; and DOES 1 through 100,
Defendants.

Case No.: **20STCV26770**

COMPLAINT:

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 226.2, 510, 558, 1194,
1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 226.2, 1182.12,
1194, 1194.2, 1197);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.2, 226.7, 516,
558);**
- (4) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §
2802); and**
- (7) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 et seq.).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Ada Mirna Briseno (“Plaintiff”) hereby brings this Complaint (“Complaint”)
2 against Defendants Mar Vista Hospice Inc., a California Corporation, and DOES 1 to 100,
3 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

4 **PARTIES**

5 1. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
6 Plaintiff was and currently is, a California resident. During the four years immediately preceding
7 the filing of the Complaint in this action and within the statute of limitations periods applicable
8 to each cause of action pled herein, Defendants employed Plaintiff as a non-exempt employee.
9 Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost
10 money and/or property, and has been deprived of the rights guaranteed by California Business &
11 Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226.7, 510, 512, 516, 558, 1182.12,
12 1194, 1194.2, 1197, 1198, 2802, and 2804, and Industrial Welfare Commission Wage Order No.
13 5 (“Wage Order 5”), which sets employment standards for the “Public Housekeeping Industry.”

14 2. Plaintiff is informed and believes, and based thereon alleges, that during the four
15 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
16 continue to do) business as a hospice care services provider. Defendants employed Plaintiff in
17 Los Angeles County and the State of California and, therefore, were (and are) doing business in
18 Los Angeles County and the State of California.

19 3. The true names, identities and capacities, whether individual, corporate, associate
20 or otherwise, of Defendants Does 1 through 100 are unknown to Plaintiff at this time, who
21 therefore sues said defendants by such fictitious names pursuant to California Code of Civil
22 Procedure § 474. Upon ascertaining the true and correct names, titles, capacities and/or identities
23 of the defendants designated herein as Does, Plaintiff will amend this Complaint accordingly.

24 4. Plaintiff is informed and believes, and thereon alleges, that all of the Defendants
25 herein, however designated, whether by real or fictitious name, were and are in some manner
26 responsible for the events, happenings, occurrences and instrumentalities upon and about which
27 complaint is hereinafter made.

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1 5. Plaintiff is further informed and believes, and thereon alleges, that each of the
2 Defendants herein, whether designated by real or fictitious names, are, and at all times relevant
3 hereto, were, the agent, servant, employee and hireling of each of the co-Defendants and in doing
4 the things and acts herein alleged and complained of or in failing to do that which they should
5 have done, were acting within the course and scope of such employment, agency and hiring with
6 the full knowledge, consent, approval and ratification of each of the other co-Defendants.

7 6. At all times mentioned herein, Defendants, and each of them, were members of
8 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
9 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
10 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff.

11 **JURISDICTION AND VENUE**

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

16 8. Venue as to each Defendant is proper in this judicial district pursuant to California
17 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
18 complained of hereon occurred in the County of Los Angeles. Defendants own, maintain offices,
19 transact business, have agent(s) within the County of Los Angeles, and/or otherwise are found
20 within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for
21 purposes of service of process.

22 9. Subject matter in this action is properly heard in this Court, as the amount in
23 controversy in this case exceeds \$25,000.00.

24 **GENERAL FACTUAL ALLEGATIONS**

25 10. Defendants employed Plaintiff as a non-exempt Registered Nurse from
26 approximately November 2018 to February 2019. Plaintiff provided in-home hospice care
27 services to Defendants' clients. Defendants scheduled Plaintiff to work five shifts per week from
28 7:00 a.m. to 7:00 p.m., and assigned her to visit approximately 8-12 patients during each shift.

1 11. Throughout Plaintiff's tenure, Defendants compensated Plaintiff on a piece-rate
2 basis, whereby she was paid a set amount for each patient to whom she provided care. Although
3 Defendants compensated Plaintiff on a piece-rate basis, Defendants failed to separately
4 compensate her for time spent working on tasks which were not otherwise compensated on a
5 piece-rate basis (i.e. non-productive time). These non-productive tasks include, but are not limited
6 to, attending meetings, and traveling between patients' residences. Specifically, Defendants
7 required Plaintiff to attend monthly meetings wherein Plaintiff provided status updates to her
8 supervisors and co-workers regarding her assigned patients. As to travel time, Plaintiff's commute
9 between her assigned patients' respective residences lasted approximately one to one and one-
10 half hours each day. Nevertheless, Defendants required Plaintiff to only record the hours she spent
11 providing direct patient care, and as such, did not record or pay Plaintiff for travel time. As a
12 result of Defendants' policies and/or practices, Defendants deprived Plaintiff of minimum and
13 overtime wages for hours actually worked.

14 12. Further, while working on a piece-rate basis, Plaintiff worked shifts in excess of
15 3.5 hours; however, Plaintiff was not provided with a paid rest period for every 4-hour period
16 worked, or major fraction thereof, because Plaintiff did not have sufficient time during her shift
17 to take 10-minute rest periods and still perform all of her duties. Specifically, Plaintiff was
18 generally entitled to 3 rest periods per shift since she generally worked more than 10 hours;
19 however, Plaintiff was frequently unable to take any rest periods, let alone the 3 to which she was
20 entitled. Moreover, upon information and belief, Defendants' piece-rate compensation plan failed
21 to separately compensate Plaintiff for required rest periods, in violation of California law. *See*
22 *Labor Code § 226.2* (requiring employers to separately compensate piece-rate workers for rest
23 periods and other non-productive time); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013)
24 (requiring employer to separately compensate rest periods in "activity-based compensation
25 system").

26 13. At all times relevant herein, Defendants' meal period policies and/or practices
27 failed to provide Plaintiff with legally-compliant meal periods. Specifically, due to work demands
28 imposed by Defendants, Plaintiff was often unable to take a meal period prior to the completion

1 of the fifth hour of work, and on some occasions, she was not provided with a 30-minute meal
2 period at all. In addition, Plaintiff was not given an option to record, nor did she record, her meal
3 periods. Thus, Defendants failed to maintain records of Plaintiff's meal periods. Nor was Plaintiff
4 provided with second meal periods on days when she worked more than 10.0 hours, or ever
5 informed by Defendants that she was entitled to second meal periods. On those occasions when
6 Plaintiff was not provided with all legally-compliant meal periods to which she was entitled, upon
7 information and belief, Defendants failed to compensate Plaintiff with the required meal period
8 premium for each workday there was a meal period violation as mandated by Labor Code § 226.7.

9 14. As a result of Defendants' failure to pay all overtime and minimum wages, as well
10 as rest and meal period premiums, Defendants failed to pay all final wages due to Plaintiff at the
11 separation of her employment.

12 15. Defendants also failed to reimburse and/or indemnify Plaintiff for all reasonable
13 and necessary work expenditures including, but not limited to, use of her personal vehicle,
14 personal cellular phone, personal laptop computer, and expenses incurred in the purchase of
15 medical supplies and/or equipment. Specifically, Defendants required Plaintiff to use her personal
16 vehicle to visit patients at their respective residences. Further, Defendants required Plaintiff to
17 use her personal cellular phone to communicate with her supervisors, co-workers, and patients.
18 Defendants also required Plaintiff to use her personal laptop computer to access the names and
19 addresses of the patients to whom she was assigned to visit for each shift. Lastly, Defendants
20 required Plaintiff to purchase medical supplies and/or equipment including a blood pressure
21 machine, gloves, masks, and a bag to store the medical equipment. Notwithstanding that
22 Defendants required Plaintiff to use her personal vehicle, personal cellular phone, personal laptop
23 computer, and personal funds to purchase medical supplies and/or equipment, Defendants failed
24 to reimburse these expenses. Therefore, Plaintiff is entitled reimbursement pursuant to Labor
25 Code § 2802.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 16. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 17. This cause of action is brought pursuant to Labor Code §§ 204, 226.2, 510, 558,
6 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all
7 overtime hours worked, and provide a private right of action for the failure to pay all overtime
8 compensation for overtime work performed.

9 18. At all relevant times, Defendants were required to properly compensate non-
10 exempt employees, including Plaintiff, for all overtime hours worked pursuant to California Labor
11 Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay employees “one
12 and one-half times such employee’s regular rate of pay for all hours worked over 40 hours in the
13 workweek;” “one and one-half times the employee’s regular rate of pay for all hours worked in
14 excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8)
15 hours worked on the seventh (7th) consecutive day of work in a workweek;” and “double the
16 employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for
17 all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a
18 workweek.”

19 19. At all relevant times, Defendants were required to compensate Plaintiff separately
20 for rest periods and other non-productive time, pursuant to Labor Code § 226.2.

21 20. Defendants caused Plaintiff to work overtime hours, but did not compensate her at
22 one and one-half times her regular rate of pay for such hours.

23 21. The foregoing policies and practices are unlawful and create entitlement to
24 recovery by Plaintiff in a civil action for the unpaid amount of overtime premiums owing,
25 including interest thereon, statutory penalties, attorneys’ fees, and costs of suit according to
26 California Labor Code §§ 204, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

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SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23. This cause of action is brought pursuant to Labor Code §§ 204, 226.2, 558, 1194, 1197 and 1198, which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

24. At all relevant times, Defendants were required to compensate Plaintiff for all hours worked pursuant to California Labor Code §§ 1194, 1197 and 1198, and Wage Order 5. Wage Order 5, § 4 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff to work hours in a workweek, but did not properly compensate Plaintiff at least at the minimum wage for all hours worked.

25. At all relevant times, Defendants were required to compensate Plaintiff separately for rest periods and other non-productive time, pursuant to Labor Code § 226.2.

26. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants, in addition to owing minimum wages to Plaintiff, also owe liquidated damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

27. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff in a civil action for the unpaid amount of minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, and 1198, Wage Order 5, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

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1 **THIRD CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 29. Wage Order 5, § 12, and California Labor Code §§ 226.7 and 516 establish the
6 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
7 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

8 30. Furthermore, Labor Code § 226.2 provides that piece-rate employees must be
9 compensated separately for rest periods.

10 31. As alleged herein, Defendants failed to authorize and permit Plaintiff from taking
11 all required rest periods as a non-exempt employee. Defendants also failed to separately
12 compensate Plaintiff for each rest period to which she was entitled.

13 32. The foregoing violations create an entitlement to recovery by Plaintiff in a civil
14 action for the unpaid amount of rest period premiums owing, including interest thereon, as well
15 as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§
16 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

17 **FOURTH CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 34. Defendants failed to provide Plaintiff with proper meal periods in accordance with
22 the mandates of the California Labor Code and Wage Order 5. As such, Defendants are
23 responsible for paying premium compensation for meal period violations pursuant to Labor Code
24 §§ 226.7, 512, and 558, and Wage Order 5.

25 35. Plaintiff is informed and believes that Defendants failed to pay meal period
26 premiums at employees' regular rate of compensation, despite Defendants' failure to provide
27 Plaintiff with all legally-compliant meal periods. As a result, Plaintiff is owed meal period
28 premium payments per Labor Code § 512 and 226.7, and Civil Code §§ 3287(b) and 3289.

1 **FIFTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

4 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 37. This cause of action is brought pursuant to California Labor Code §§ 201-203,
6 which require an employer to pay all wages immediately at the time of separation of employment
7 in the event the employer discharges the employee or the employee provides at least 72 hours of
8 notice of their intent to quit. In the event the employee provides less than 72 hours of notice of
9 their intent to quit, said employee's wages become due and payable not later than 72 hours upon
10 said employee's last date of employment.

11 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 failed to timely pay Plaintiff all final wages due to Plaintiff at her separation from employment,
13 including unpaid minimum and overtime wages, as well as unpaid rest and meal period premium
14 wages.

15 39. Defendants' failure to pay all final wages was willful within the meaning of Labor
16 Code § 203. Defendants' willful failure to timely pay Plaintiff her earned wages upon her
17 separation from employment results in a continued payment of daily wages up to thirty days from
18 the time the wages were due.

19 40. Plaintiff is entitled to compensation pursuant to Cal. Labor Code § 203, plus
20 reasonable attorneys' fees and costs of suit.

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES**

23 **(AGAINST ALL DEFENDANTS)**

24 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 42. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
26 states that "an employer shall indemnify his or her employees for all necessary expenditures or
27 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
28 his or her obedience to the directions of the employer."

1 43. Furthermore, at all relevant times herein, Defendants were subject to Labor Code
2 § 2804, which states that “any contract or agreement, express or implied, made by any employee
3 to waive the benefits of this article or any part thereof, is null and void, and this article shall not
4 deprive any employee or his personal representative of any right or remedy to which he is entitled
5 under the laws of this State.”

6 44. Due to Defendants’ unlawful policy and practice of requiring Plaintiff to, *inter*
7 *alia*, use her personal vehicle, personal cellular phone, personal laptop computer, and personal
8 funds for purchasing medical supplies and/or equipment, and failing to pay reimbursements to
9 Plaintiff, Defendants have violated Labor Code §2802.

10 45. As a proximate result of Defendants’ policies and/or practices in violation of Labor
11 Code §§ 2802 and 2804, Plaintiff suffered damages in sums, which will be shown according to
12 proof.

13 46. Plaintiff is entitled to attorneys’ fees and costs of suit pursuant to Labor Code §
14 2802(c) for bringing this action.

15 **SEVENTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL DEFENDANTS)**

18 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 48. Defendants have engaged and continue to engage in unfair and/or unlawful
20 business practices in California in violation of California Business and Professions Code § 17200
21 *et seq.*, by failing to provide all required overtime wages for overtime hours worked, failing to
22 provide all required minimum wages for regular hours worked, failing to separately compensate
23 for rest periods or other non-productive time, failing to provide all required meal periods, failing
24 to authorize and permit all required rest periods, failing to pay meal or rest period premium wages,
25 failing to timely pay all final wages, and failing to indemnify all necessary business expenditures.

26 49. Defendants’ utilization of these unfair and/or unlawful business practices deprived
27 Plaintiff of compensation to which she is legally entitled, constitutes unfair and/or unlawful
28 competition, and provides an unfair advantage over Defendants’ competitors who have been

1 and/or are currently employing workers and attempting to do so in honest compliance with
2 applicable wage and hour laws.

3 50. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct, and therefore
4 seeks full restitution of monies, as necessary and according to proof, to restore any and all monies
5 withheld, acquired and/or converted by Defendants, per California Business and Professions Code
6 §§ 17203 and 17208.

7 51. The acts complained of herein occurred within the last four years immediately
8 preceding the filing of the Complaint in this action.

9 52. Plaintiff was compelled to retain the services of counsel to file this court action to
10 protect her interests, to obtain restitution, and to enforce important rights affecting the public
11 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she
12 is entitled to recover under Code of Civil Procedure § 1021.5.

13 **PRAYER**

14 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

15 1. Upon the First Cause of Action, for compensatory, consequential, general, and
16 special damages according to proof pursuant to Labor Code §§ 204, 226.2, 510, 558, 1194, and
17 1198;

18 2. Upon the Second Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 204, 226.2, 558, 1194, 1194.2,
20 1197, 1197.1, and 1198;

21 3. Upon the Third Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, 558, and 1198;

23 4. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
24 special damages according to proof pursuant to Labor Code §§ 226.7, 512, 558, and 1198;

25 5. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
26 Labor Code § 203;

27 6. Upon the Sixth Cause of Action, for compensatory, consequential, general, and
28 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

