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JOSHUA SEIDEL on behalf of
himself, all those similarly situated,
all aggrieved employees, and the State
of CA as a Private Attorneys General

BY FAX

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

JOSHUA KEITH SEIDEL, on behalf of
himself, all similarly situated, all aggrieved
employees, and the State of CA as a Private
Attorneys General,

Plaintiffs,

vs.

AIDS HEALTHCARE FOUNDATION, and
DOES 1-50, inclusive,

Defendants.

Case No.: **20STCV31938**

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT:**

1. FAILURE TO PAY FOR ALL HOURS
WORKED, INCLUDING OVERTIME
2. WAITING TIME PENALTIES
3. FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS
4. UNLAWFUL BUSINESS PRACTICES,
BUS & PROF CODE §17200
5. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
CAL. LABOR CODE §2698 *et seq.*

JURY TRIAL DEMANDED

Plaintiff JOSHUA KEITH SEIDEL, brings this Class and PAGA representative action
complaint on behalf of himself, all others similarly situated, all aggrieved employees, and the
State of California as a Private Attorneys General, and alleges as follows:

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NATURE OF THE ACTION

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2 1. This is an employment class and representative action on behalf of over 50 hourly,
3 non-exempt employees against their employers for violations of numerous wage and hour laws.
4 Plaintiff brings this employment class action complaint on behalf of himself, and all others
5 similarly situated, all aggrieved employees, and as a Private Attorney General for the State of
6 California, against Defendant AIDS HEALTHCARE FOUNDATION, and Does 1-50
7 (collectively “Defendants”).

8 2. In this Complaint, Plaintiff alleges that Defendants failed to (1) pay for all hours
9 worked, including overtime hours worked; (2) timely pay wages owed; (3) furnish and maintain
10 accurate wage statements and payroll records, and engaged in (4) unlawful and unfair business
11 practices, and is liable for (5) penalties under the Private Attorneys General Act (“PAGA”),
12 Labor Code §2698 et seq. Attorney General Act (“PAGA”), Labor Code §2698 et seq.

13 3. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)
14 § 382, seeking recovery for unpaid wages, including overtime wages, statutory and waiting time
15 penalties, injunctive and other equitable relief, interest, and reasonable attorneys’ fees and costs.
16 Pursuant to both the class action and representative action procedures provided for under
17 California law, Plaintiff, on behalf of himself and proposed Class members and aggrieved
18 employees (also referred to as “Class”), also seeks injunctive relief and restitution of all benefits
19 Defendants have received from their unlawful actions as alleged herein.

20 4. Plaintiff has provided notice of these claims pursuant to §2698 *et. seq.*, to the Labor and
21 Workforce and Development Agency (“LWDA”) and now brings this Complaint, including claims
22 for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*
23 Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*

24 5. The “Class Period” is designated as the four-year period prior to the filing of this
25 Complaint through the date of final disposition of this action. From the start of the Class Period
26 through the present, Defendants have had a pattern and/or practice of ignoring and violating
27 California wage and hour laws in their business as more fully set forth below.
28

6. The “PAGA Period” is defined herein commences one year prior to the date of filing the PAGA Notice letter with the LWDA.

7. Defendants have treated all persons employed in California in such a way as to violate California's laws governing conditions of employment and payment of wages owed. Plaintiff asserts that Defendants have knowingly and with conscious disregard of the law refused to pay the Class members and aggrieved employees and aggrieved employees wages owed, including overtime wages. Given that Plaintiff and Class members worked shifts of varying hours, the amount of wages owed to them for underpaid overtime also necessarily varies. Defendants have violated numerous Labor Code provisions, as set forth herein. Class members and aggrieved employees and aggrieved employees are owed back pay, plus interest and/or premiums and penalties under Business and Professions Code section 17203 to compensate Class members and aggrieved employees and aggrieved employees for the delay in receiving wages due.

8. Defendants, by and through their actions, have engaged in unfair competition, requiring restitution to persons affected and disgorgement of profits so obtained.

THE PARTIES

9. Plaintiff JOSHUA KEITH SEIDEL is a resident of the State of California and a current employee of Defendants.

10. Defendant AIDS HEALTHCARE FOUNDATION is a global nonprofit doing business in California with the capacity to sue and to be sued, and doing business in the county of Los Angeles, State of California.

11. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff and the Class members and aggrieved employees and aggrieved employees herein alleged were proximately caused by such Doe Defendants.

12. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff, aggrieved employees, and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or pattern in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

13. Venue is proper in this judicial district because Defendants conduct business in this County and Defendants have legal obligations to Plaintiff and many of the Classes and aggrieved employees in this case that arose in this county.

14. The monetary damages, restitution and statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

15. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendants are incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

CLASS AND REPRESENTATIVE ACTION ALLEGATIONS

16. During the Class and PAGA Periods, Defendants committed various violations of the California Labor Code, the UCL and IWC Wage Order 7, as alleged below in more detail. Defendant have a pattern of enforcing multiple policies that violate state law which are intended to increase its own profits to the detriment of its employees.

17. Defendants employed, upon information and belief, more than 50 current and former non-exempt employees (hereafter “Class members and aggrieved employees” or collectively “the Class”) during the Class Period.

1 18. Upon information and belief, all putative Classes and aggrieved employees are non-
2 exempt and paid on an hourly basis – not on a salary basis.

3 19. Defendants failed to (1) pay for all hours worked, including overtime hours worked;
4 (2) timely pay wages owed; (3) furnish and maintain accurate wage statements and payroll records,
5 and engaged in (4) unlawful and unfair business practices. These policies and practices have
6 deprived Plaintiff and Class members and aggrieved employees of payment for all hours worked,
7 and further damages, as set forth below.

8 20. Unpaid Hours Worked, Including Overtime Hours Worked. Section 2(G) of Wage
9 Order 7 defines “hours worked” as “the time during which an employee is subject to the control
10 of an employer, and includes all the time the employee is suffered or permitted to work, whether
11 or not required to do so.” Plaintiff, the putative Classes, and aggrieved employees were not paid
12 for all hours worked, including overtime hours worked because of Defendants’ pattern of failing
13 to lawfully calculate overtime on both a daily and weekly basis. Defendants also had a pattern of
14 classifying certain types of hours worked, such as training, under different codes, and excluded
15 those coded hours from total hours worked for purposes of calculating overtime. Because the
16 number of hours spent training and working overtime hours varied by employee, the amount of
17 overtime pay owed to employees also varies.

18 21. Defendants paid overtime to employees who worked more than 40 hours in one week
19 and had a pattern of failing to pay overtime to employees who worked more than eight hours in
20 one day. Because Defendants have a pattern and practice of incorrectly calculating overtime,
21 Plaintiff and aggrieved employees have been denied significant amounts of overtime
22 compensation.

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22. As the time records below indicate, Defendants are not always calculating overtime correctly. Total overtime for the two-week pay period is listed at the bottom of the page as 0.42 hours. However, on 12/16, he worked a 9-hour shift, entitling him to 1 hour of overtime. Additionally, on 12/20 he worked a 9.1-hour shift, entitling him to 1.1 hours of overtime. He was also underpaid on 12/23 for 1.12 hours of overtime. In this two-week pay period, alone, Plaintiff worked at least 3.22 hours of overtime, yet was only paid for 0.42 hours.

Seidel, Joshua Keith				PJ50010181		12/15/2019 - 12/28/2019, Selected range of dates						
Date	Schedule	In	Transfer	Out	In	Transfer	Out	Pay Code	Amount	Daily	Period	Shift
Sun 12/15												
Mon 12/16	9:00AM- 3:30PM	8:53AM	14140200/////	1:26PM	1:56PM		3:30PM			6.12	6.12	6.12
Tue 12/17	9:00AM- 7:00PM	8:59AM	14140700/////	1:39PM	2:40PM		7:00PM			9.0	15.12	9.0
Wed 12/18	8:30AM- 5:00PM	8:24AM	14140100/////	12:26PM	12:56PM		5:00PM			8.1	23.22	8.1
Thu 12/19	9:00AM- 5:30PM	8:54AM	14140100/////	1:01PM	1:32PM		5:31PM			8.1	31.32	8.1
Fri 12/20	9:00AM- 7:00PM	8:54AM	14140700/////	1:17PM	1:47PM		5:17PM					
Fri 12/20		5:47PM		7:00PM						9.1	40.42	9.1
Sat 12/21											40.42	
Sun 12/22											40.42	
Mon 12/23	9:00AM- 7:00PM	8:53AM	14140700/////	12:59PM	1:29PM		3:28PM					
Mon 12/23		3:59PM		7:01PM						9.12	49.53	9.12
Tue 12/24	9:00AM- 5:00PM	8:55AM	14140700/////	1:22PM	1:53PM		5:00PM			7.57	57.1	7.57
Wed 12/25								Christmas	10.0			
Wed 12/25								Holiday	-2.0	8.0	65.1	
Thu 12/26	9:00AM- 5:30PM	9:00AM	14140100/////	1:00PM	1:30PM		5:30PM			8.0	73.1	8.0
Fri 12/27	8:30AM- 5:30PM	8:30AM	14140500/////	12:30PM	1:30PM		5:30PM			8.0	81.1	8.0
Sat 12/28											81.1	
Totals												
All												
Account								Pay Code		Amount		
14141200/403113/2E2005151/0/0/0/0								Holiday		8.0		
(x)14140700/403113/2E2005151/0/0/0/0								Overtime		0.42		
(x)14140200/403113/2E2005151/0/0/0/0								Regular		6.12		

1 23. Failure to timely pay wages owed. Defendant failed to timely pay wages owed by
2 failing to pay wages due upon separation as well as failing to pay wages owed twice per month.
3 Because Plaintiff is a current employee of Defendants, this claim is brought only on behalf of the
4 PAGA representative class.

5 24. At all times relevant hereto, Labor Code Section 201 provided that, if an employer
6 such as Defendants discharged an employee such as a member of the Class, the wages earned
7 and unpaid at the time of discharge were due and payable immediately. Furthermore, Labor
8 Code Sections 202 provided that, if an employee such as a member of the PAGA representative
9 class voluntarily left his or her employment, the wages earned and unpaid must be paid by the
10 employer within seventy-two (72) hours thereafter, unless the employee has given seventy-two
11 (72) hours previous notice of his or her intention to leave, in which case the employee is entitled
12 to receive his or her wages immediately at the time of quitting.

13 25. During the PAGA period, Defendants willfully failed to pay former employees all of
14 their earned and unpaid wages, either at the time of their discharge or within seventy-two (72)
15 hours of their quitting. By failing to comply with California labor laws governing the payment of
16 all hours worked and other penalties and damages as set forth above, Defendants from time to
17 time underpaid the actual amount of regular hours and overtime hours worked by separated
18 employees. These unpaid amounts were still owing to former employees when they ended their
19 employment with Defendants pursuant to Labor Code §§ 203 and 227.3.

20 26. During the PAGA period, Labor Code Section 203 provided that, if employers such
21 as Defendants willfully fail to pay any wages of an employee who is discharged or who quits, the
22 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
23 paid or until an action therefore is commenced, but the wages shall not continue for more than
24 thirty (30) days. Accordingly, employees who were discharged or who quit during the PAGA
25 period are entitled to receive their wages for each day they were not paid, at their regular rate of
26 pay, up to a maximum of thirty (30) days.

27 27. Failure to pay wages owed twice per month. Defendants were required to pay
28 Plaintiff and aggrieved employees wages earned twice during each calendar month pursuant to

1 Labor Code §204(a). Defendants from time to time failed to pay wages earned to employees
2 because of Defendants' failure to properly calculate and pay overtime wages as set forth above.
3 As a result of these practices, aggrieved employees from time to time were underpaid for hours
4 worked, including overtime and penalty wages, and this underpayment resulted in a failure to
5 pay wages owed twice per month resulting in liability under Labor Code §210 for a violation of
6 §204.

7 28. Wage statement violations. Derivative of the claims alleged above, the statements
8 provided to Plaintiff, Class members, and aggrieved employees from time to time have not
9 accurately reflected actual gross wages earned, including overtime, and total hours worked. Such
10 failures caused injury to Plaintiff, Class members, and aggrieved employees, by, among other
11 things, impeding them from knowing the total hours worked and the amount of wages to which
12 they are and were entitled, nor the accurate rate of overtime pay they were entitled to.

13 29. Unlawful business practices. Based upon the above allegations, Defendant has
14 engaged in unfair competition.

15 30. Plaintiff brings this action on behalf of himself, and all other persons similarly
16 situated, to recover from Defendants for failure to comply with California wage and hour laws,
17 and for claims under Business and Professions Code § 17200.

18 31. This action has been brought and may properly be maintained as a class action
19 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed classes are
20 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of
21 50 employees who have been similarly injured by Defendants' unlawful employment policies
22 and practices.

23 32. The "Relevant Class Period" or proposed "Class Period" as defined herein
24 commences four years prior to the date of filing this Complaint.

25 33. The "PAGA Period" is defined herein commences one year prior to the date of filing
26 the PAGA Notice letter with the LWDA.

27 34. The PAGA Class, also referred to herein as "aggrieved employees": "All current and
28 former hourly, non-exempt employees of Defendants in California, at any time from one year

1 prior to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter.”
2 Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
3 respect to the issues or in any other way.

4 35. Plaintiff brings this action on his behalf and as a class action under Cal. Code of Civil
5 Procedure §382 on behalf of the following defined groups:

6 Proposed Classes:

7 A. All persons who are employed or have been employed by Defendants in the State
8 of California as hourly, non-exempt workers during the period of the relevant statute of
9 limitations, who worked one or more shifts in excess of eight (8) hours. (“Overtime Class”)

10 B. All persons who are employed or have been employed by Defendants in the State
11 of California as hourly, non-exempt workers during the period of the relevant statute of
12 limitations, who received pay for one or more pay periods. (“Wage Statement Class”)

13 36. This action is brought, and may properly be maintained, as a class action under CCP
14 §382 and/or a representative action under Business & Professions Code §§17200 et seq. and
15 Labor Code §2699 because there is a well-defined community of interest in the litigation, and the
16 proposed Classes and PAGA Class (collectively “Class”) are easily ascertainable.

17 A. Numerosity. The Proposed Classes are so numerous that joinder of all
18 members is impractical. Plaintiff is informed and believes, and on that basis alleges, that during
19 the relevant time period, Defendants employed over 50 putative Class members and aggrieved
20 employees who are geographically dispersed and who satisfy the definition of the proposed
21 Class. As such, a class action is the only available method for the fair and efficient adjudication
22 of this controversy. Membership in the Proposed Classes can be easily ascertained by an
23 examination and analysis of employee and payroll records, among other records within
24 Defendants’ possession and control.

25 B. Typicality: Plaintiff’s claims are typical of the claims of the Class members
26 and aggrieved employees. Plaintiff, like others similarly situated, was subjected to Defendants’
27 common, unlawful policies, practices, and procedures described above. The Plaintiff’s positions
28 at the company was typical of those of other Class members and aggrieved employees. Plaintiff’s

1 claims are typical of the claims of each Class Member because each have sustained damages
2 arising out of and caused by Defendants' common course of conduct, as alleged herein. As such,
3 Plaintiff has the same interests in this matter as all members of the Class.

4 C. Adequacy: Plaintiff will fairly and adequately protect the interests of the
5 members of the Class. Plaintiff has retained counsel competent and experienced in complex class
6 actions and California labor and employment litigation.

7 D. Commonality: Common questions of law and fact exist, including but not
8 limited to the following:

9 i. Whether Defendants violated wage and hour laws by failing to
10 pay employees for all hours worked;

11 ii. Whether Defendants properly calculated and compensated
12 employees for all overtime hours worked;

13 iii. Whether Defendants unlawfully failed to keep and furnish Class
14 members and aggrieved employees with accurate, itemized records of hours worked, in violation
15 of Labor Code §§ 226 and 1174;

16 iv. Whether Defendants' pattern and practice of failing to pay
17 employees wages owed twice per month violates Labor Code §204(a);

18 v. Whether Defendants' pattern and practice of failing to pay its
19 employees wages due within the time required by law after their employment ended violates the
20 law and warrants waiting time penalties under Cal. Labor Code §§ 200, 201, 202, 203, and 204;
21 and

22 vi. The proper measure of damages sustained and the proper
23 measure of restitution recoverable by Plaintiff, the Class members and aggrieved employees;

24 vii. Whether the Class members and aggrieved employees are
25 entitled to injunctive relief to enjoin any further violations of wage and labor laws;

26 viii. Whether Defendants, and each of them, are/were participants in
27 the alleged unlawful and/or tortious conduct;

28 ix. Whether Defendants' conduct was willful and reckless;

1 x. The effect upon and the extent of injuries suffered by Plaintiff
2 and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or
3 other compensation;

4 xi. What is the extent of liability of each Defendant, including DOE
5 defendants, to each Class member?

6 E. Superiority: A class action is superior to other available methods of the fair
7 and efficient adjudication of the controversy, particularly in the context of wage and hour
8 litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes
9 individual actions impracticable given the expenses and burdens associated with seeking
10 individual relief. Prosecuting over 50 identical, individual lawsuits does not promote judicial
11 efficiency or equity and consistency in judicial results. Moreover, the Classes are groups of
12 hourly employees who rely on their wages and requiring that each individual take time away
13 from work to prosecute individual actions would be inequitable and result in undue hardship for
14 the individual Class members and aggrieved employees and their families. Public pattern favors
15 efficient resolution of their claims and uniform enforcement of California Labor laws against
16 entities skirting their legal obligations at the expense of a vulnerable working population.

17 37. Manageability: Plaintiff is informed and believes that all allegations in this Complaint
18 are capable of being determined on the same evidence and based primarily on review of
19 corporate records and key testimony of Defendants' corporate representatives. To the extent
20 statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel
21 will employ competent experts and consultants in the field to determine and review evidence for
22 both issues of liability and damages in a scientifically reliable manner.

23 38. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules
24 of Court, that the absent Class members and aggrieved employees be notified by the best notice
25 practicable under the circumstances, including individual notice to all members who can be
26 identified through reasonable effort. The names and address of the Class members and aggrieved
27 employees are available from Defendants.

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1 **FIRST CAUSE OF ACTION**

2 Failure to Pay for All Hours Worked, Including Overtime Hours Worked

3 Overtime Class against all Defendants

4 (Cal. Lab. Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

5 39. Plaintiff incorporates by reference in this cause of action each allegation of the
6 preceding paragraphs as though fully set forth herein.

7 40. Section 2(G) of Wage Order 7 defines “hours worked” as “the time during which an
8 employee is subject to the control of an employer, and includes all the time the employee is
9 suffered or permitted to work, whether or not required to do so.”

10 41. Plaintiff, the putative class, and aggrieved employees were not paid for all hours
11 worked, including overtime hours worked because of Defendants’ pattern of failing to lawfully
12 calculate overtime on both a daily and weekly basis. Defendants also classified certain types of
13 hours worked, such as training, under different codes, and excluded those coded hours from total
14 hours worked for purposes of calculating overtime.

15 42. Pursuant to Labor Code §510(a), “[e]ight hours of labor constitutes a day’s work.
16 Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one
17 workweek and the first eight hours worked on the seventh day of work in any one workweek
18 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
19 an employee.”

20 43. Defendants paid overtime to employees who worked more than 40 hours in one week,
21 and did not always pay overtime to employees who worked more than eight hours in one day.
22 Because Defendants have a pattern and practice of incorrectly calculating overtime, Plaintiff and
23 aggrieved employees have been denied significant amounts of overtime compensation. Because
24 the amount of overtime hours worked by each class member varies, the amount of damages owed
25 necessarily varies.

26 44. As a result of Defendant’s conduct, Plaintiff, Class members and aggrieved
27 employees have been deprived of payment for all hours worked and minimum wage for all hours
28 worked in an amount to be determined at trial, and are entitled to recovery of the unpaid balance

1 of the full amount of these wage, including interest thereon, reasonable attorneys' fees, and costs
2 of suit pursuant to Labor Code §1194, 218.5, and Cal. Code of Civ. Pro. §1021.5; liquidated
3 damages and interest thereon pursuant to Labor Code §1194.2; and civil penalties, restitution of
4 wages, and liquidated damages pursuant to Labor Code §1197.1.

5 45. Plaintiff alleges on information and belief that Defendants' failure to pay the Class
6 members and aggrieved employees for all hours worked as alleged in this cause of action, was
7 willful, and thus entitles the Class members and aggrieved employees to penalties under Labor
8 Code § 203. Specifically, Labor Code § 203 provides that an employee's wages shall continue as
9 a penalty until paid or for a period of up to 30 days from the time they were due, whichever
10 period is shorter.

11 46. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court
12 award civil penalties as set forth in § 558 for each pay period during which Defendants failed to
13 pay the Class members and aggrieved employees as alleged above.

14 **SECOND CAUSE OF ACTION**

15 Failure To Provide Accurate Itemized Wage Statements

16 Overtime Class and Wage Statement Class against all Defendants

17 (Cal. Labor Code §§ 226(a), 226.3, 1174, 1174.5)

18 47. Plaintiff incorporates by reference in this cause of action each allegation of the
19 preceding paragraphs as though fully set forth herein.

20 48. California Labor Code § 226(a) provides that “[e]very employer shall, semimonthly
21 or at the time of each payment of wages, furnish each of his or her employees...an accurate
22 itemized statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the
23 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
24 piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for
25 which the employee is paid, (7) the name of the employee and his or her social security
26 number..., (8) the name and address of the legal entity that is the employer, and (9) all applicable
27 hourly rates in effect during the pay period and the corresponding number of hours worked at
28 each hourly rate by the employee.”

1 49. Defendant from time to time knowingly and intentionally failed to provide timely,
2 accurate, itemized wage statements to Plaintiff, the Class, and aggrieved employees in
3 accordance with Labor Code §§ 226. As a result of the unlawful employment practices discussed
4 herein, the statements provided to Plaintiff and the Class have not accurately reflected actual
5 gross wages earned, including overtime and double time hours worked.

6 50. California Labor Code § 226(e) provides that an employee suffering injury as a result
7 of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is
8 entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay
9 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
10 period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

11 51. Additionally, Defendants from time to time knowingly and intentionally failed to
12 provide timely, accurate, itemized wage statements to Plaintiff and Class members and aggrieved
13 employees in accordance with Labor Code §§ 226 and 1174. The statements provided to Plaintiff
14 and Class members and aggrieved employees have not always accurately reflected actual gross
15 wages earned, and overtime pay among other compensation, and the total hours worked by
16 employees. Such failures caused injury to Plaintiff and the Wage Statement Class members and
17 aggrieved employees, by, among other things, impeding them from knowing the total hours
18 worked and the amount of wages to which they are and were entitled.

19 52. Defendants' violations of Labor Code section 226 are ongoing and will continue until
20 and unless this Court enters an injunction barring such violations.

21 53. Plaintiff and the Class members and aggrieved employees are therefore entitled to the
22 damages and penalties, plus attorneys' fees and costs, provided for under Labor Code §§ 226(e)
23 and (g). Pursuant to Labor Code § 226(g), Plaintiff and the Class members and aggrieved
24 employees are also entitled to and seek injunctive relief requiring Defendants to comply with
25 Labor Code 226(a).

26 54. Labor Code § 1174 provides that "[e]very employer employing labor in this state
27 shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the
28 ages of all minors [and] (d) [k]eep at a central location in the state or at the plants or

1 establishments at which employees are employed, payroll records showing the hours worked
2 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
3 piece rate paid to, employees employed at the respective plants or establishments. These records
4 shall be kept in accordance with rules established for this purpose by the commission, but in any
5 case shall be kept on file for not less than two years.”

6 55. Labor Code § 1174.5 provides that “[a]ny person employing labor who willfully fails
7 to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
8 records maintained by subdivision (d) of Section 1174, or to allow any member of the
9 commission or employees of the division to inspect records pursuant to subdivision (b) of
10 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

11 56. Plaintiff alleges on information and belief that Defendants knowingly and
12 intentionally failed to furnish the Class members and aggrieved employees with accurate
13 itemized statements for each pay period that they worked and failed to maintain accurate payroll
14 records of the Class members and aggrieved employees as mandated by Labor Code §§ 226 and
15 1174. As such, the Class members and aggrieved employees are entitled to civil penalties and an
16 award of costs and attorney's fees under § 226(e). In addition, the Class members and aggrieved
17 employees are entitled to recover civil penalties under § 1174.5.

18 **THIRD CAUSE OF ACTION**

19 Unfair Practice Under The Unfair Competition Act (“UCL”)

20 Overtime Class and Wage Statement Class against all Defendants

21 (Bus. & Prof. Code §17200)

22 57. Plaintiff incorporates by reference in this cause of action each allegation of the
23 preceding paragraphs as though fully set forth herein.

24 58. Defendants knowingly committed, and upon information and belief continue to
25 commit, ongoing unlawful business practices within the meaning of the UCL, including, but not
26 limited to unlawful practices as described in the causes of action articulated above, and hereby
27 incorporated herein.
28

1 59. Plaintiff lost money and property as a result of Defendants' unlawful business
2 practices described above.

3 60. Pursuant to the UCL, Plaintiff and all Class members and aggrieved employees are
4 entitled to restitution of money or property acquired by Defendants by means of such unlawful
5 business practices, in amounts not yet known, but to be ascertained at trial.

6 61. Pursuant to the UCL, Plaintiff and Class members and aggrieved employees are
7 entitled to injunctive relief against Defendants' ongoing unlawful business practices. If an
8 injunction does not issue enjoining Defendants from engaging in the unlawful business practices
9 described above, Plaintiff and the general public will be irreparably injured.

10 62. Plaintiff has no plain, speedy, and adequate remedy at law. Defendants, if not
11 enjoined by this Court, will continue to engage in the unlawful business practices described
12 above in violation of the UCL, in derogation of the rights of Plaintiff and Class members and
13 aggrieved employees and of the general public.

14 63. Plaintiff's success in this action will result in the enforcement of important rights
15 affecting the public interest by conferring a significant benefit upon the general public.

16 64. Defendants' numerous violations of local and California law, as well as the other
17 statutory and regulatory violations alleged herein, constitute unlawful business actions and
18 practices in violation of Business and Professions Code § 17200, et seq.

19 65. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class
20 members and aggrieved employees are entitled to restitution of unpaid wages among other relief
21 alleged herein, that were withheld and retained by Defendants during a period that commences
22 four years prior to the filing of this action. Plaintiffs are further entitled to a permanent injunction
23 requiring Defendants to properly calculate and pay all hours worked, timely pay wages upon
24 discharge, maintain accurate wages statements and payroll records, in addition to an award of
25 attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable law,
26 and costs.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 Statutory Penalties Pursuant to Private Attorneys General Act,
3 Labor Code §2698 *Et Seq.* Plaintiff on behalf of Aggrieved Employees and State of
4 California as Private Attorney General against all Defendants

5 66. Plaintiff incorporates by reference in this cause of action each allegation of the
6 preceding paragraphs as though fully set forth herein.

7 67. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
8 aggrieved employee, on behalf of himself and other current or former employees, may recover
9 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
10 are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved
11 employee under PAGA.

12 68. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
13 Code provisions:

14 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
15 Lab. Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*);

16 b. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 204(a),
17 2698 *et seq.*); and

18 c. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
19 Records (Cal. Lab. Code §§226(a), 226.3, 1174, 1174.5, 2698 *et seq.*).

20 69. As set forth above, Defendants have committed numerous violations for which the
21 Labor Code provides for penalties, including violations of all applicable Labor Code provisions
22 set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned
23 Labor Code provisions as statutes to which §2699.3's procedural requirements must be met
24 before a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural
25 requirements specified in §2699.3 by providing written notice to the Defendants and the Labor &
26 Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and
27 correct copy of the Notice correspondence showing compliance with §2699.3. No notice of
28 intent to investigate the alleged violations was provided within the statutory period.

1 Consequently, Plaintiff has exhausted administrative remedies, and on behalf of themselves and
2 all other aggrieved current and former employees of Defendants. Plaintiff, therefore, now
3 pursues this cause of action as permitted by §2698, et seq.

4 70. Enforcement of statutory provisions enacted to protect workers and to ensure proper
5 and prompt payment of wages due to employees is a fundamental public interest in California.
6 Consequently, Plaintiff's success in this action will result in the enforcement of important rights
7 affecting the public interest and will confer a significant benefit upon the general public. Private
8 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
9 enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be
10 against the interests of justice to require payment of attorneys' fees and costs from any recover
11 that might be obtained herein, pursuant to, inter alia, Labor Code §§2698, *et seq.*, and Code of
12 Civil Procedure §1021.5

13 71. In addition to the causes of action alleged above, if Plaintiff succeeds in enforcing
14 these rights affecting the public interest, then attorneys' fees may be awarded to Plaintiff and
15 against Defendants under Code of Civil Procedure §1021.5 and other applicable law in part,
16 because:

17 **a.** A successful outcome in this action will result in the enforcement of important
18 rights affecting the public interest by requiring Defendants to comply with the wage and hour
19 laws and California's unfair business practice law;

20 **b.** This action will result in a significant benefit to Plaintiff, Class members,
21 aggrieved employees, and the general public by bringing to a halt unlawful and/or unfair activity;

22 **c.** Unless this action is prosecuted, aggrieved employees, members of the Class and
23 general public will not recover those moneys, and many of Defendants' employees would not be
24 aware that the acts and practices they were subjected to by Defendants were wrongful;

25 **d.** Unless this action is prosecuted, Defendants will continue to mislead their
26 employees about the true nature of their rights and remedies under the wage and hour laws; and

27 72. An award of attorneys' fees and costs is necessary for the prosecution of this action
28 and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in
general, by preventing Defendants from continuing to circumvent the wage and hour statutes and

1 frustrate the long-standing recognition by the California legislature and the courts that such
2 statutes, as pled herein, are not merely a matter of private concern between employer and
3 employee to be eviscerated by considerations of waiver, contributory negligence, good or bad
4 faith, and private agreements. Rather, the wage and hour statutes have been described as a matter
5 of public concern, were designed to provide minimum substantive guarantees to individual
6 workers and are essential to public welfare.

7 REQUEST FOR RELIEF

8 WHEREFORE, Plaintiff, on behalf of himself the Proposed Classes, and
9 aggrieved employees, requests judgment and the following specific relief against Defendants as
10 follows:

11 A. That the Court determine that this action may be maintained as a class action
12 under Code of Civil Procedure § 382;

13 B. Provision of class notice to all members of the Classes;

14 C. That Defendant is found to have violated the above-referenced provisions of
15 the Labor Code and IWC Wage Order 7-2001 as to Plaintiff, Class members and aggrieved
16 employees;

17 D. That Defendant's actions are found to be willful and/or in bad faith to the
18 extent necessary under §§ 201, 202, 203, and 558 of the California Labor Code for willful failure
19 to pay all compensation owed at the time of separation to aggrieved employees no longer
20 employed by Defendants,

21 E. That Defendant's actions are found to be willful and/or in bad faith to the
22 extent necessary under §226 and 1174 of the California Labor Code for willful failure to provide
23 the required accurate and itemized wage statements to Plaintiff, Class members and aggrieved
24 employees;

25 F. That Plaintiff and Class members and aggrieved employees receive an award
26 in the amount of unpaid wages owed, including interest thereon, and penalties as provided in the
27 Labor Code and Wage Order, including under Labor Code §§ 203, 510, and 558, subject to proof
28 at trial;

1 G. That Defendants be ordered to pay restitution to Plaintiff, Class members and
2 aggrieved employees for amounts acquired through Defendants' unlawful activities pursuant to
3 Business and Professions Code §§ 17200-05 and enjoined to cease and desist from unlawful and
4 unfair activities in violation of California Business and Professions Code § 17200 et. seq.;

5 H. That Plaintiff, Class members and aggrieved employees receive an award of
6 reasonable attorneys' fees and costs pursuant to Code of Civil Procedure §1021.5, Labor Code
7 §226, 218.5, and 1194 and/or applicable laws;

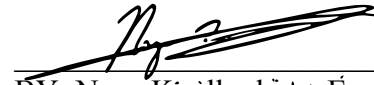
8 I. That the Court award penalties pursuant to Labor Code §2698 et seq.;

9 J. That the Court issue declaratory relief that Defendant's challenged policies are
10 unlawful; and

11 K. That the Court order further relief, in law and equity, as it deems appropriate
12 and just.
13

14 DATED: August 19, 2020

KOUL LAW FIRM

15 
16 BY: Nazo Koulloukian, Esq.
17 Attorneys for Plaintiff
18 JOSHUA KEITH SEIDEL, putative class
19 members, aggrieved employees, and the
20 State of California as a Private Attorney
21 General
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the putative class, hereby demands trial by jury to the full extent permitted by law.

DATED: August 19, 2020

KOUL LAW FIRM



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff
JOSHUA KEITH SEIDEL, putative class
members, aggrieved employees, and the
State of California as a Private Attorney
General

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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

June 5, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

AIDS HEALTHCARE FOUNDATION
6255 West Sunset Blvd, 21st Floor
Los Angeles, CA 90028

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*
Claimant: Joshua Keith Seidel
Employer: AIDS Healthcare Foundation

Dear Sir or Madam:

Joshua Keith Seidel (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, AIDS Healthcare Foundation (hereafter “Employer.”)

Claimant works for Employer as a Pharmacist. Claimant is an aggrieved employee and his proposed PAGA representative action would represent numerous current and former aggrieved employees. Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

Section 2(G) of Wage Order 7 “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Claimant and aggrieved employees were not paid for all hours worked, including overtime hours worked because of Employer’s policy of failing to lawfully calculate overtime on both a daily and weekly basis. Employer also classified certain types of hours worked, such as training, under different codes, and excluded those coded hours from total hours worked for purposes of calculating overtime.

Pursuant to Labor Code §510:

(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

Employer only paid overtime to employees who worked more than 40 hours in one week, and did not pay overtime to employees who worked more than 8 hours in one day. Because Employer has a policy and practice of incorrectly calculating overtime, Claimant and aggrieved employees have been denied significant amounts of overtime compensation.

As the time records below indicate, Employer is not calculating overtime correctly. Total overtime for the two-week pay period is listed at the bottom of the page as 0.42 hours. However, on 12/16, he worked a 9-hour shift, entitling him to 1 hour of overtime. Additionally, on 12/20 he worked a 9.1-hour shift, entitling him to 1.1 hours of overtime. He was also underpaid on 12/23 for 1.12 hours of overtime. In this two-week pay period, alone, Claimant earned worked at least 3.22 hours of overtime, yet was only paid for .42.

Seidel, Joshua Keith				PJ50010181		12/15/2019 - 12/28/2019, Selected range of dates						
Date	Schedule	In	Transfer	Out	In	Transfer	Out	Pay Code	Amount	Daily	Period	Shift
Sun 12/15												
Mon 12/16	9:00AM- 3:30PM	8:53AM	14140200/////	1:26PM	1:56PM		3:30PM			6.12	6.12	6.12
Tue 12/17	9:00AM- 7:00PM	8:59AM	14140700/////	1:39PM	2:40PM		7:00PM			9.0	15.12	9.0
Wed 12/18	8:30AM- 5:00PM	8:24AM	14140100/////	12:26PM	12:56PM		5:00PM			8.1	23.22	8.1
Thu 12/19	9:00AM- 5:30PM	8:54AM	14140100/////	1:01PM	1:32PM		5:31PM			8.1	31.32	8.1
Fri 12/20	9:00AM- 7:00PM	8:54AM	14140700/////	1:17PM	1:47PM		5:17PM					
Fri 12/20		5:47PM		7:00PM						9.1	40.42	9.1
Sat 12/21											40.42	
Sun 12/22											40.42	
Mon 12/23	9:00AM- 7:00PM	8:53AM	14140700/////	12:59PM	1:29PM		3:28PM					
Mon 12/23		3:59PM		7:01PM						9.12	49.53	9.12
Tue 12/24	9:00AM- 5:00PM	8:55AM	14140700/////	1:22PM	1:53PM		5:00PM			7.57	57.1	7.57
Wed 12/25								Christmas	10.0			
Wed 12/25								Holiday	-2.0	8.0	65.1	
Thu 12/26	9:00AM- 5:30PM	9:00AM	14140100/////	1:00PM	1:30PM		5:30PM			8.0	73.1	8.0
Fri 12/27	8:30AM- 5:30PM	8:30AM	14140500/////	12:30PM	1:30PM		5:30PM			8.0	81.1	8.0
Sat 12/28											81.1	
Totals												
All All												
Account								Pay Code		Amount		
14141200/403113/2E2005151/0/0/0/0								Holiday		8.0		
(x)14140700/403113/2E2005151/0/0/0/0								Overtime		0.42		
(x)14140200/403113/2E2005151/0/0/0/0								Regular		6.12		

Employer has required Claimant and others to work hours in excess of eight hours in a day and forty in a week, but has not paid these employees overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code §510. As a result, claimant and others have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 204(a) and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all compensation due and owing to all employees, and these amounts remain due to separated employees as of the time their employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees because of employer's failure to properly calculate and pay overtime wages as set forth above. As a result of these practices, aggrieved employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month resulting in liability under Labor Code §210 for violation of §204.

Failure to Furnish and Maintain Accurate Wage Statements and Payroll Records

(Cal. Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226, 226.3, 1174, and 1174.5. Derivative of the claims alleged above, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime, and total hour worked. Such failures caused injury to Claimant and aggrieved employees, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled, nor the accurate rate of overtime pay they were entitled to. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employer has violated several California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant