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Superior Court of CA,
County of Santa Clara
20CV366750
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Attorneys for Plaintiff, JAZMIN ALEJO
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

20CV366750

JAZMIN ALEJO on behalf of herself and all
others similarly situated

Plaintiff,

vs.

PACKARD CHILDREN'S HEALTH
ALLIANCE, a California corporation, and
DOES 1 through 50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages**
- 2) Failure to Provide Lawful Rest
Periods or Compensation in Lieu
Thereof**
- 3) Failure to Timely Pay Wages**
- 4) Knowing and Intentional Failure to
Comply With Itemized Employee
Wage Statement Provisions**
- 5) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

Plaintiff JAZMIN ALEJO on behalf of herself and all others similarly situated assert
claims against Defendant PACKARD CHILDREN'S HEALTH ALLIANCE and DOES 1
through 50, inclusive (hereinafter collectively referred to as "Defendants") as follows:

I.

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought against Defendants and any subsidiaries and affiliated companies (hereinafter “PACKARD CHILDREN’S” or “Defendants”) on behalf of Plaintiff JAZMIN ALEJO (hereinafter “Plaintiff”) and all employees not classified as “Exempt” or primarily employed in executive, professional, or administrative capacities, employed by, or formerly employed by PACKARD CHILDREN’S in California. (hereinafter referred to as “Non-Exempt Employees” and/or “Class Members”).

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices, and workload requirements wherein Plaintiff and all other Non Exempt Employees: (1) were not paid proper wages they earned for all hours they worked including proper overtime compensation; (2) were not permitted to take their full statutorily authorized rest breaks, or had their rest breaks shortened due to the scheduling and work load and time requirements placed upon them by Defendants. Defendants failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the rest period was not properly provided.

3. During the liability period, Defendants have also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Non Exempt Employees with accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked.

4. During the liability period, Defendants have also failed to pay all wages owed to discharged or resigned Class Members in a timely manner.

5. Plaintiff, on behalf of herself and all Class Members, bring this action pursuant to Labor Code sections 201, 202, 203, 204, 225, 226, 226.7, 510, 1194, 1199, California Code of Regulations, Title 8, section 11040 *et seq.* and any other applicable Industrial Welfare

Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

6. Plaintiff, on behalf of herself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to pay all lawful wages owed and rest break premiums to each of their Non-Exempt Employees.

II.

VENUE

7. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant conducts substantial and continuous commercial activities in Santa Clara County, California and each Defendant is within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in Santa Clara County, California.

III.

PARTIES

8. Plaintiff is, and at all times mentioned in this complaint was, a resident of California.

9. On information and belief, Defendant PACKARD CHILDREN’S is a California corporation which is headquartered in Palo Alto, California and engaged in providing health care services throughout California.

10. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

IV.

FACTUAL BACKGROUND

12. Plaintiff was employed by Defendants as a medical assistant on or about November 4, 2019 and occupied said non-exempt, hourly position until the last day of her employment on or about January 2020.

13. During the relevant time period, Defendants implemented a timekeeping policy and practice for Employees which rounded their clock-in and clock-out times in a manner that resulted in a loss of time worked. Plaintiff and Class Members arrived several minutes before the start of their shifts to clock in. Defendants used a computer time clock, in which Plaintiff and Class Members would have to access a series of screens to allow them to “Clock-in” and/or “Clock-out”. Many times, the system would experience technical difficulties, creating a delay for Plaintiff and Class Members to clock in and clock out effectively and without issue. Once Plaintiff and Class Members were able to clock in, the clock was rounded to their actual scheduled time of entry. As a result, Plaintiff and Class Members were consistently underpaid and were required to work off the clock and without pay, including for overtime and/or minimum wages they did not receive.

14. During the relevant time period, Defendants failed to pay proper overtime compensation when Non Exempt Employees worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

15. During the liability period, due to the time constraints resulting from the demands of work shifts and understaffing, Plaintiff and Class Members were frequently unable to take any rest breaks during their work shift or had their rest breaks shortened to less than ten

1 (10) minutes. Further, Plaintiff and similarly situated Class Members were not permitted to
2 leave the premises for their rest breaks in the event they were needed to be called back to work.

3 16. As Non Exempt Employees, Plaintiff and Class Members were frequently
4 required to work without being permitted or authorized a minimum ten (10) minute rest period
5 for every four hours or major fraction thereof worked and not compensated one (1) hour of pay
6 at their regular rate of compensation for each workday that a rest period was not provided, in
7 violation of California labor laws, regulations, and IWC Wage Orders.

8 17. On information and belief, PACKARD CHILDREN'S willfully failed to pay all
9 earned wages in a timely manner to Non Exempt Employees; nor have Defendants paid to
10 Plaintiff and Non Exempt Employees, upon or after termination of their employment with
11 Defendant, all compensation due, including but not limited to all wages owed and
12 compensation for having failed to properly provide rest periods and meal periods.

13 18. Defendants have also failed to maintain accurate itemized records reflecting
14 total hours worked and have failed to provide Non Exempt Employees with accurate, itemized
15 wage statements reflecting total hours worked and appropriate rates of pay for those hours
16 worked

17 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 currently employ and during the relevant period have employed over one hundred (100)
19 employees in the State of California in non-exempt hourly positions.

20 20. Non-Exempt Employees employed by PACKARD CHILDREN'S, at all times
21 pertinent hereto, have been non-exempt employees within the meaning of the California Labor
22 Code, and the implementing rules and regulations of the IWC California Wage Orders.

23 **V.**

24 **CLASS ACTION ALLEGATIONS**

25 21. Plaintiff seeks to represent a Class comprised of and defined as: All persons
26 who are or were employed by Defendants in the state of California as hourly non exempt
27 employees within four (4) years prior to the date this lawsuit is filed ("liability period") until
28

1 resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

2 22. Plaintiff also seeks to represent Subclasses which are composed of persons
3 satisfying the following definitions:

4 a. All persons who are or were employed by Defendants in the state of
5 California, as hourly non-exempt employees who, within the liability period, were not
6 accurately and fully paid all lawful wages owed to them including proper overtime
7 compensation for all their hours worked;

8 b. All persons who are or were employed by Defendants in the state of
9 California, as hourly non-exempt employees who, within the liability period, were not
10 accurately and fully paid all lawful wages owed to them including minimum wage for all their
11 hours worked

12 c. All persons who are or were employed by Defendants in the state of
13 California, as hourly non exempt employees who, within the liability period, have not been
14 provided compliant minimum ten (10) minute rest period for every four (4) hours or major
15 fraction thereof worked per day and were not provided compensation in lieu thereof;

16 d. All persons who are or were employed by Defendants in the state of
17 California as hourly non exempt employees who, within the liability period, were not timely
18 paid all wages due and owed to them upon the termination of their employment with
19 Defendants; and

20 e. All persons who are or were employed by Defendants in the state of
21 California as hourly non exempt employees who, within the liability period, were not provided
22 with accurate and complete itemized wage statements.

23 23. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to
24 amend or modify the class description with greater specificity or further division into
25 subclasses or limitation to particular issues.

26 24. This action has been brought and may properly be maintained as a class action
27 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
28 defined community of interest in the litigation and the proposed Class is easily ascertainable.

1 **A. Numerosity**

2 25. The potential members of the Class as defined are so numerous that joinder of all
3 the members of the Class is impracticable. While the precise number of Class Members has not
4 been determined at this time, Plaintiff is informed and believes that Defendants currently
5 employ, and/or during the relevant time period employed, approximately over 100 Non-
6 Exempt Employees in California who are or have been affected by Defendants' unlawful
7 practices as alleged herein.

8 **B. Commonality**

9 26. There are questions of law and fact common to the Class predominating over any
10 questions affecting only individual Class Members. These common questions of law and fact
11 include, without limitation:

- 12 i. Whether Defendants violated Labor Code sections 510, 1194 and applicable
13 IWC Wage Orders by failing to pay all earned wages including overtime compensation
14 to Non-Exempt Employees who worked in excess of eight (8) hours in a work day
15 and/or more than forty (40) hours in a workweek;
- 16 ii. Whether Defendants also violated Labor Codes sections 200, 1194, and 1197 for
17 failing to pay minimum wages for time spent working "off the clock" without pay.
18 Labor Code §1197 provides that employees are to be paid minimum wage for each hour
19 worked, and cannot be averaged the minimum and the payment of a lesser wage than
20 the established is unlawful
- 21 iii. Whether Defendants violated Labor Code section 226.7 and applicable IWC
22 Wage Orders by failing to authorize and permit minimum 10 minute rest periods to
23 Non-Exempt Employees for every four hours or major fraction thereof worked and
24 failing to compensate said employees one hours wages in lieu of rest periods;
- 25 iv. Whether Defendants violated sections 201-203 of the Labor Code by failing to
26 pay all earned wages and/or premium wages due and owing at the time that any Class
27 Members' employment with Defendants terminated;
- 28

v. Whether Defendants violated section 226 of the Labor Code and applicable IWC Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt Employees' earned wages, work periods, meal periods and deductions;

vi. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code by failing to pay proper minimum and/or overtime wages to Non-Exempt Employees; failing to provide proper rest periods and failing to pay compensation in lieu thereof; failing to pay wages due and owing at the time the employee's employment with Defendants terminated failing to keep accurate records all in violation of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 1194, and 1199 applicable IWC Wage Orders.

vii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code and Labor Code sections 201, 202, 203, 204, 225, 226, 226.7, 510, 1194, and 1199, and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy;

C. Typicality

27. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

28. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

29. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is

entitled to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

30. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Including Overtime Wages and/or Minimum Wage
(Lab. Code §§ 510, 1194, 1199)
(Against All Defendants)

31. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

32. During the liability Defendants' policies, practices and work shift requirements resulted in Plaintiff and Non-Exempt Employees working "off the clock" and not receiving compensation for all earned wages including overtime and/or minimum wage in violation of California state wage and hour laws.

33. During the liability Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees working in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

34. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees not receiving minimum wages for time spent working off the clock while subject to the control of Defendant all without pay. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser wage than the established is unlawful.

35. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to represent have been deprived of compensation for all earned wages including minimum wage

1 and/ or overtime wages in amounts to be determined at trial, and are entitled to recovery of such
2 amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code
3 section 1194.

4 36. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
5 described herein and below.

6 **Second Cause of Action**
7 Failure to Provide Rest Periods
8 Or Compensation in Lieu Thereof
9 (Lab. Code §§226.7, IWC Wage Orders)
10 (Against All Defendants)

11 37. Plaintiff repeats and incorporates herein by reference each and every allegation
12 set forth above, as though fully set forth herein.

13 38. As alleged herein, by their failure to provide a minimum ten (10) minute rest
14 period for every four hours or major fraction thereof worked per day by Non Exempt
15 Employees, and failing to provide compensation for such non-provided rest periods, as alleged
16 above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC
17 applicable Wage Orders.

18 39. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks
19 to represent have been deprived of premium wages in amounts to be determined at trial, and are
20 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
21 §226.7.

22 40. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
23 described herein and below.

24 **Third Cause of Action**
25 Failure to Timely Pay Wages Due At Termination
26 (Lab. Code §§ 201-203)
27 (Against All Defendants)

28 41. Plaintiff repeats and incorporates herein by reference each and every allegation
set forth above, as though fully set forth herein.

1 42. Sections 201 and 202 of the California Labor Code require Defendants to pay its
2 employees all wages due within 72 hours of termination of employment. Section 203 of the
3 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
4 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid
5 in full or an action is commenced. The penalty cannot exceed 30 days of wages.

6 43. Affected class members are entitled to compensation for all forms of wages
7 earned, including overtime compensation and compensation for non provided rest and meal
8 periods but to date have not received such compensation therefore entitling them Labor Code
9 section 203 penalties.

10 44. More than 30 days have passed since Plaintiff and affected Class Members have
11 left Defendants' employ, and on information and belief, have not received payment pursuant to
12 Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned
13 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
14 section 203 for failure to pay legal wages.

15 45. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
16 described herein and below.

17
18 **Fourth Cause of Action**

19 Knowing and Intentional Failure to Comply With Itemized Employee
20 Wage Statement Provisions
21 (Lab. Code § 226(b))
22 (Against All Defendants)

23 46. Plaintiff repeats and incorporates herein by reference each and every allegation
24 set forth above, as though fully set forth herein

25 47. Section 226(a) of the California Labor Code requires Defendants to itemize in
26 wage statements all deductions from payment of wages and to accurately report total hours
27 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
28 Defendants to maintain time records showing, among others, when the employee begins and

ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the members of the proposed class. On information and belief, Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226

48. Plaintiff and Class Members have been injured by Defendants' actions by rendering them unaware of the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

49. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

50. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

Fifth Cause of Action
Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

51. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

52. Business & Professions Code Section 17200 provides:

As used in the chapter, unfair competition shall mean and include any **unlawful, unfair** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

53. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

54. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

55. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

56. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and members of the Plaintiff Class as a result of the business acts and practices described herein.

57. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below. .

VII.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code § 226.7;
5. For premium pay and penalties pursuant to Labor Code §§203, 226;
6. For attorneys' fees, interests and costs of suit under Labor Code §§ 226,1194;
7. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Dated: June 1, 2020

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