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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN BERNARDINO**

13 DAEMIAN MARTIN, as a private attorney
14 general and as an individual and on behalf
15 of all others similarly situated,

15 Plaintiffs,

16 vs.

17 LOMA LINDA UNIVERSITY MEDICAL
18 CENTER, a California corporation; and
19 DOES 1 through 50, inclusive,

19 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 17 2023

BY 
NICOLE SAENZ, DEPUTY

Case No.:

CIV DS 2017184

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LAB. CODE §§ 204, 246
- (2) VIOLATION OF BUS. & PROF. CODE
§§ 17200 *ET SEQ.*; AND
- (3) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.*

DEMAND OVER \$25,000.00

On behalf of himself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Daemian Martin, submits this Class and Representative Action Complaint against Defendant, Loma Linda University Medical Center, and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties, damages, and other relief for Defendants’ violations of Labor Code sections 204 and 246.¹

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to pay sick pay at the regular rate of pay by no later than the payday for the next regular payroll period after sick leave was taken. Plaintiff and other employees routinely earned non-discretionary incentive wages such as various shift differential wages, thus increasing their regular rate of pay. However, when sick leave was taken in workweeks that employees earned non-discretionary incentive wages, it was paid at employees’ base rate of pay rather than the regular rate of pay. Defendants thus violate Sections 204 and 246.

3. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

4. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

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¹ Except as otherwise noted, all “Section” references are to the Labor Code.

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6. Venue is proper. Defendants are located in San Bernardino County. Plaintiff works for Defendants in Loma Linda, California.

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1 10. At all times herein mentioned, each of said Defendants participated in the doing
2 of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees
3 of each of the other Defendants, as well as the agents of all Defendants, and were acting within
4 the course and scope of said agency and employment.

5 11. Plaintiff is informed and believes that at all times material hereto, each of said
6 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert
7 with, each of the other Defendants and was acting within the course and scope of such agency,
8 employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions
9 were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified
10 said acts, conduct, or omissions of the acting Defendants.

11 12. Plaintiff is informed and believes that at all times material hereto each of the
12 Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in
13 proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within
14 the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

15 **CLASS ACTION ALLEGATIONS**

16 13. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
17 certification of the following class: all current and former non-exempt employees of Defendants
18 in the State of California since April 6, 2016, who earned non-discretionary incentive wages,
19 including but not limited to shift differential wages, in workweeks that they took paid sick leave.

20 14. **Numerosity and Ascertainability:** The members of the Class are so numerous
21 that joinder of all members would be impractical, if not impossible. The identities of the
22 members of the Class are readily ascertainable by review of Defendants' records, including
23 payroll records. Plaintiff is informed and believes that Defendants violated Sections 204 and 246
24 against Plaintiff and other employees who took sick leave during workweeks in which they also
25 earned non-discretionary incentive wages such as various shift differential wages.

26 15. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
27 steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's
28 attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class.

1 Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and
2 continue to litigate numerous wage-and-hour class actions currently pending in California state
3 and federal courts.

4 16. **Common Question of Law and Fact:** There are predominant common questions
5 of law and fact and a community of interest amongst the claims of Plaintiff and of the Class.
6 Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and
7 practice of failing to pay sick pay at the regular rate of pay by no later than the payday for the
8 next regular payroll period after sick leave was taken, in violation of Sections 204 and 246.

9 17. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
10 Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other
11 members of the Class suffered. As with other members of the Class, Plaintiff is paid on an hourly
12 basis and routinely earned non-discretionary incentive wages such as various shift differential
13 wages. When sick leave was taken in workweeks that Plaintiff earned non-discretionary
14 incentive wages, it was paid at Plaintiff's base rate of pay rather than the regular rate of pay.
15 Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

16 18. The Labor Code is broadly remedial in nature. Its laws serve an important public
17 interest in establishing minimum working conditions and requirements in California. These labor
18 standards protect employees from onerous terms and conditions of employment or exploitation
19 by employers who have superior economic and bargaining power.

20 19. The nature of this action and the format of laws available to Plaintiff and
21 members of the Class make the class action format a particularly efficient and appropriate
22 procedure to redress the wrongs alleged herein. If each employee were required to file an
23 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
24 advantage since they would be able to exploit and overwhelm the limited resources of each
25 individual plaintiff with their vastly superior financial and legal resources. Requiring each
26 member of the Class to pursue an individual remedy would also discourage the assertion of
27 lawful claims by employees who would be disinclined to file an action against their former or
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1 current employer for real and justifiable fear of retaliation and permanent damage to their careers
2 at their current or subsequent employment.

3 20. The prosecution of separate actions by individual members of the Class, even if
4 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
5 to individual members of the Class that would establish potentially incompatible standards of
6 conduct for Defendants, or (b) adjudications with respect to individual members of the Class that
7 would, as a practical matter, be dispositive of, or substantially impair or impede the ability to
8 protect, the interests of other members of the Class not parties to the adjudications. Further, the
9 claims of the individual members of the Class are not sufficiently large to warrant vigorous
10 individual prosecution considering the concomitant costs and expenses.

11 21. Defendants' pattern, practice, and uniform administration of corporate policy in
12 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern
13 will establish the rights of Plaintiff and the Class to recover unpaid wages, including interest
14 thereon, applicable penalties, reasonable attorneys' fees, and costs of suit, pursuant to Sections
15 210, 218.5, and 248.5, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure
16 section 1021.5.

17 22. This action is brought for the benefit of the Class, which is commonly entitled to a
18 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The
19 Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

20 **FIRST CAUSE OF ACTION**

21 **Violation of Lab. Code §§ 204 and 246**

22 **(By Plaintiff and the Class Against All Defendants)**

23 23. The preceding paragraphs are re-alleged and incorporated by this reference.

24 24. Section 246 provides that an employee is entitled to sick pay wages for use of
25 accrued sick leave. An employer must calculate paid sick leave by using one of two calculations:
26 (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the
27 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
28 the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt

employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Consistent with Section 204, Section 246 also provides that an employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

25. Defendants paid Plaintiff and the Class for sick leave at the incorrect rate of pay. Defendants paid Plaintiff and the Class at the base hourly rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary incentive wages such as various shift differential wages, or by dividing the employees' total wages, not including overtime premium pay, by the employees' total hours worked in the full pay periods of the prior 90 days of employment, as required by Section 246. This resulted in underpayments of sick pay to Plaintiff and the Class. Because Defendants did not pay, or timely pay, Plaintiff and the Class all owing and unpaid sick pay wages, Defendants violate Sections 204, 246, and other Labor Code sections.

26. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class to unpaid wages, including interest thereon, applicable penalties, attorneys' fees, and costs of suit.

SECOND CAUSE OF ACTION

Violation of Business and Professions Code §§ 17200 *Et Seq.*

(By Plaintiff and the Class Against All Defendants)

27. The preceding paragraphs are re-alleged and incorporated by this reference.

28. Plaintiff is informed and believes that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein, including the failure to pay sick pay at the regular rate of pay by no later than the payday for the next regular payroll period after sick leave was taken, in violation of Sections 204 and 246.

29. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

30. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Violation of Labor Code §§ 2698 *Et Seq.*

(By Plaintiff and Aggrieved Employees Against All Defendants)

31. The preceding paragraphs are re-alleged and incorporated by this reference.

32. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity, Plaintiff seeks penalties for Defendants’ violations of Sections 204 and 246 committed since April 6, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

33. As stated herein, Defendants violate Sections 204 and 246 by failing to pay sick pay at the regular rate of pay by no later than the payday for the next regular payroll period after sick leave was taken. Plaintiff and other employees routinely earned non-discretionary incentive wages such as various shift differential wages, thus increasing their regular rate of pay. However, when sick leave was taken in workweeks that employees earned non-discretionary incentive wages, it was paid at employees' base rate of pay rather than the regular rate of pay.

34. On or about July 22, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of

Sections 204 and 246. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

35. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 204 and 246 against all aggrieved employees for the time period described above.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including interest thereon, and penalties pursuant to Sections 210 and 248.5, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs and attorneys' fees;
6. Upon the Third Cause of Action for penalties according to proof pursuant to Sections 210, 248.5, and 2698 *et seq.*, and for costs and attorneys' fees;
7. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5, 248.5, or 2699, and Code of Civil Procedure section 1021.5; and
8. For such other and further relief that the Court may deem just and proper.

DATED: August 17, 2020

DIVERSITY LAW GROUP, P.C.

By: 

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Employees