

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

POLARIS LAW GROUP LLP
William L. Marder (State Bar No. 170131)
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

RAFAEL AGUILAR, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

ENCOMPASS HEALTH REHABILITATION
HOSPITAL OF MODESTO, LLC, a Delaware
limited liability company; and DOES 1 through
50, inclusive,

Defendants.

Electronically Filed
9/29/2020 12:25 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Mouang Saechao, Deputy

\$1435 PAID

Case No.: CV-20-004234

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF LAB. CODE § 227.3;
(2) VIOLATION OF BUS. & PROF. CODE
§§ 17200 ET SEQ.; AND
(3) VIOLATION OF LAB. CODE §§ 2698 ET
SEQ.**

DEMAND OVER \$25,000.00

This case has been assigned to Judge Freeland, John D
Dept. 23
Department _____, for all purposes including Trial.

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Rafael Aguilar, submits this Class and
3 Representative Action Complaint against Defendant, Encompass Health Rehabilitation Hospital of
4 Modesto, LLC, and Does 1 through 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who worked for Defendants.
8 The Complaint seeks penalties and other relief for Defendants’ violations of Labor Code sections 201-
9 203 and 227.3.¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees by not
12 paying earned and unused PTO wages at the end of their employments. Specifically, Plaintiff and other
13 employees earned paid time off (“PTO”) that could be used for vacation or any other reason. Upon the
14 end of their employments, all earned and unused PTO wages were not paid out to Plaintiff and other
15 employees. For example, upon the end of Plaintiff’s employment, he still had approximately 7.49 hours
16 of earned but unused PTO wages. Plaintiff was not paid his PTO wages for such hours as part of his
17 final paycheck, and he still has not been paid for such wages. Defendants thus violate Sections 201-203
18 and 227.3, and the Unfair Competition Law, codified at Business and Professions Code sections 17200
19 *et seq.* (the “UCL”).

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

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

26
27
28

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

6. Venue is proper as Defendants employed Plaintiff in Modesto, California.

6

7
8
9
10
11
12
13

14
15
16
17
18
19

20
21
22
23
24
25

26

27

1 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
2 scope of said agency and employment.

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

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

13 CLASS ACTION ALLEGATIONS

14 13. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
15 certification of all employees of Defendants in the State of California who earned PTO during their
16 employment with Defendants and whose employment ended (either voluntarily or involuntarily) at any
17 time since April 6, 2016 (the "Class").

18 14. **Numerosity and Ascertainability:** The members of the Class are so numerous that
19 joinder of all members would be impractical, if not impossible. The identities of the members of the
20 Class are readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is
21 informed and believes that Defendants violated Sections 201-203 and 227.3 by not paying Plaintiff and
22 other employees earned and unused PTO wages at the end of their employments.

23 15. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
24 represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready,
25 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have
26 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
27 and-hour class actions currently pending in California state and federal courts.

1 16. **Common Question of Law and Fact:** There are predominant common questions of law
2 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
3 informed and believes that Defendants uniformly administer a corporate policy and practice of
4 routinely failing to pay Plaintiff and other employees earned and unused PTO wages at the end of their
5 employments in violation of Sections 201, 202, and 227.3.

6 17. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
7 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
8 Class suffered. As with other members of the Class, Plaintiff earned PTO, which could be used for
9 vacations or any other reason. Upon the end of his employment, all earned and unused PTO wages
10 were not paid out to Plaintiff, who still had approximately 7.49 hours of earned but unused PTO wages.
11 Plaintiff was not paid his PTO wages for such hours as part of his final paycheck, and he still has not
12 been paid for such wages. Plaintiff thus is a member of the Class and has suffered the alleged violations
13 of the Labor Code.

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

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

27 20. The prosecution of separate actions by individual members of the Class, even if
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to

individual members of the Class that would establish potentially incompatible standards of conduct for Defendants, or (b) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests of other members of the Class not parties to the adjudications. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses.

21. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Sections 201-203 and 227.3 applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover unpaid PTO wages, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

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

FIRST CAUSE OF ACTION

Violation of Labor Code § 227.3

(By Plaintiff and the Class Against All Defendants)

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

24. Under California law, the right to a paid vacation, when offered in an employer's policy or contract of employment, constitutes deferred wages for services rendered. Once the right to a paid vacation vests, it becomes part of the consideration earned by the employee and is a protected right under Section 227.3. *See Suastez v. Plastic Dress-Up Co.*, 31 Cal. 3d 774, 780 (1982). Section 227.3 specifically provides that where an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to said employee as wages at the final rate of pay upon termination.

25. During their employment with Defendants, Plaintiff and other employees earned PTO, which could be used for vacations or any other reason. Upon the end of their employments, all earned and unused PTO wages were not paid out to Plaintiff and other employees. Such conduct is a direct

1 violation of Section 227.3. For example, upon the end of Plaintiff's employment, he still had
2 approximately 7.49 hours of earned but unused PTO wages. Plaintiff was not paid his PTO wages for
3 such hours as part of his final paycheck, and he still has not been paid for such wages. Plaintiff has
4 been damaged by Defendants' seizure of his unpaid vested PTO and is entitled to repayment of those
5 wages with interest thereon at the legal rate.

6 26. Section 203 provides that, if any employer fails to pay any of the wages owed to an
7 employee who is discharged or quits, the wages of the employee shall continue as a penalty from the
8 due date thereof at the same rate until paid or until an action therefore is commenced, for up to thirty
9 (30) days. Defendants' failure to fully compensate Plaintiff and other employees their accrued and
10 unused PTO balances constitutes a knowing and willful seizure of Plaintiff and the Class's vested PTO
11 wages. Defendants' unlawful conduct constitutes a violation of Sections 201 and 202 for the failure to
12 pay all the wages owed to Plaintiff and other employees. As a result, Defendants are liable to Plaintiff
13 and the Class for waiting time penalties pursuant to Section 203, up to a maximum of thirty (30) days.

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

18 **SECOND CAUSE OF ACTION**

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

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

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

22 29. Plaintiff is informed and believes that at Defendants have engaged and continue to
23 engage in unfair and unlawful business practices in California by utilizing the employment policies and
24 practices alleged herein. Specifically, Defendants uniformly administer a corporate policy and practice
25 of routinely failing to earned and unused PTO wages at the end of Plaintiff and the Class's
26 employments, in violation of Section 227.3.

27 30. Defendants' utilization of such unfair and unlawful business practices constitutes unfair
28 and unlawful competition and provides an unfair advantage over Defendants' competitors, as

1 proscribed by the UCL. Defendants have deprived Plaintiff and the Class the minimum working
2 condition standards and conditions due to them under the Labor Code and applicable IWC Wage
3 Orders.

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

9 **THIRD CAUSE OF ACTION**

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

11 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

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

13 33. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
14 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
15 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-203 and 227.3 committed
16 since April 6, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an "aggrieved
17 employee," as one or more of the alleged violations was committed against Plaintiff as an employee of
18 Defendants.

19 34. As alleged herein, Defendants violate Sections 201-203 and 227.3 by failing to pay
20 Plaintiff and other aggrieved employees earned and unused PTO wages at the end of their
21 employments. Specifically, Plaintiff and other aggrieved employees earned PTO that could be used for
22 vacation or any other reason. Upon the end of their employments, all earned and unused PTO wages
23 were not paid out to Plaintiff and other aggrieved employees.

24 35. On or about September 22, 2020, Plaintiff sent written notice to the Labor & Workforce
25 Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections
26 201-203 and 227.3. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of
27 the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to
28 investigate the allegations in the written notice.

36. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 201-203 and 227.3, against all aggrieved employees for the alleged period.

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 unpaid vested wages, including interest thereon, and applicable penalties, pursuant to Sections 201-203, 218.5, and 227.3, 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 Section 2699, and for costs and attorneys' fees;
7. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5 and 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: September 29, 2020

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff