

From 213.488.6554

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Page 3 of 14

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

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

Plaintiffs,

vs.

HAYWARD SISTERS HOSPITAL dba ST.
ROSE HOSPITAL, a California corporation; and
DOES 1 through 50, inclusive,

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

(1) VIOLATION OF LAB. CODE § 226(a);
(2) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.*

DEMAND OVER \$25,000.00

FILED BY FAX

ALAMEDA COUNTY

September 23, 2020

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG20074747

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, Joseluis Davila, submits this Class and
3 Representative Action Complaint against Defendant, Hayward Sisters Hospital dba St. Rose Hospital,
4 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 work for Defendants. The
8 Complaint seeks penalties and other relief for Defendants’ violations of Labor Code section 226(a).¹

9 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
10 intentionally and with deliberate indifference and conscious disregard to the rights of employees.
11 Defendants routinely fail to provide accurate, itemized wage statements to Plaintiff and other non-
12 exempt employees who were paid shift differential wages. Specifically, whenever shift differential
13 wages are paid, Defendants fail to itemize the accurate total hours worked on wage statements
14 furnished to Plaintiff and other non-exempt employees. Moreover, when the hours shown on the wage
15 statements are added up, they do not appear to add up to the actual total hours worked. Defendants thus
16 violate Section 226(a) and owe applicable penalties to Plaintiff and other employees.

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

20 JURISDICTION AND VENUE

21 4. The Complaint seeks more than \$25,000.00 in relief. The Court has jurisdiction of
22 Defendants’ violations of Section 226(a).

23 5. Venue is proper. Defendants are in Alameda County. Plaintiff works for Defendants in
24 Hayward, California.

25 PARTIES

26 6. Plaintiff began working for Defendants in or about 2008. Throughout his employment as
27 a phlebotomist, Plaintiff has been paid on an hourly basis as a non-exempt employee. Whenever shift
28

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

1 differential wages are paid, Defendants consistently issue Plaintiff wage statements that fail to itemize the
2 accurate total hours worked. Moreover, Defendants consistently issue Plaintiff wage statements that
3 show hours that, when added up, do not appear to add up to the actual total hours worked. For example,
4 Plaintiff's wage statement for the pay period of August 16 through 29, 2020, shows that Plaintiff
5 worked a total of 156.8 hours, even though Plaintiff was paid overtime for 0.2 hours only. Plaintiff thus
6 is a victim of the policies, practices, and customs of Defendants complained of in this action in ways
7 that have deprived him of the rights guaranteed by the Labor Code.

8 7. Plaintiff is informed and believes that Hayward Sisters Hospital dba St. Rose Hospital,
9 was and is a California corporation. Plaintiff is informed and believes that at all times herein mentioned
10 Defendant and Does 1 through 50, are and were corporations, business entities, individuals, or
11 partnerships that are and were licensed to do business and actually doing business in the State of
12 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
13 subject to Section 226(a).

14 8. Plaintiff does not know the true names or capacities of the defendants sued herein as
15 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
16 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true
17 names and capacities are known. Plaintiff is informed and believes that each of said fictitious
18 defendants was responsible in some way for the matters alleged herein and proximately caused the
19 illegal employment practices, wrongs, and injuries complained of herein.

20 9. At all times herein mentioned, each of said Defendants participated in the doing of the
21 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
22 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
23 scope of said agency and employment.

24 10. Plaintiff is informed and believes that at all times material hereto, each of said
25 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
26 each of the other Defendants and was acting within the course and scope of such agency, employment,
27 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
28

certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

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

CLASS ACTION ALLEGATIONS

12. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of all current and former non-exempt employees of Defendants in the State of California who were paid shift differential wages at any time since April 6, 2019 (the “Class”).

13. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violate Section 226(a) by failing to provide accurate, itemized wage statements that show the actual total hours worked whenever non-exempt employees in California are paid shift differential wages.

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

15. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of routinely failing to provide accurate, itemized wage statements that show the actual total hours worked whenever non-exempt employees in California are paid shift differential wages.

16. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the

1 Class suffered. As with other members of the Class, Plaintiff is paid on an hourly basis. Whenever shift
2 differential wages have been paid during his employment, Defendants have consistently issued Plaintiff
3 wage statements that neither itemize the accurate total hours worked nor show hours that, when added
4 up, equal the actual total hours worked. Plaintiff thus is a member of the Class and has suffered the
5 alleged violations of the Labor Code.

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

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

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

27 20. Defendants' pattern, practice, and uniform administration of corporate policy in
28 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will

1 establish the rights of Plaintiff and the Class under Section 226, the applicable IWC Wage Order, and
2 Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and
3 costs of suit.

4 **FIRST CAUSE OF ACTION**

5 **Violation of Labor Code § 226(a)**

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

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

8 22. Section 226(a) requires employers to provide itemized wage statements to its employees
9 that show accurate information, including without limitation, the total hours worked. Whenever
10 Defendants pay shift differential wages to Plaintiff and the Class, Defendants fail to provide accurate,
11 itemized wage statements in violation of Section 226(a).

12 23. As a matter of policy and practice, Defendants routinely fail to provide accurate,
13 itemized wage statements to Plaintiff and the Class. Specifically, whenever shift differential wages are
14 paid, Defendants fail to itemize the accurate total hours worked on wage statements furnished to
15 Plaintiff and the Class. Moreover, when the hours shown on the wage statements are added up, they do
16 not appear to add up to the actual total hours worked. Defendants thus violate Section 226(a) and owe
17 applicable penalties to Plaintiff and other employees.

18 24. Such a pattern, practice, and uniform administration of corporate policy is unlawful
19 under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees,
20 and costs of suit.

21 **SECOND CAUSE OF ACTION**

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

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

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

25 26. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
26 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
27 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 226(a) committed since April
28 6, 2019, against all aggrieved employees.

27. As stated herein, whenever non-exempt employees in California are paid shift differential wages Defendants violate Sections 226(a) by routinely failing to provide wage statements that itemize the accurate total hours worked. 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.

28. On or about September 9, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 226(a). 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.

29. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 226(a) 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 penalties pursuant to Section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for penalties according to proof pursuant to Sections 226.3 and 2698 *et seq.*, and for costs and attorneys' fees;
6. Upon each cause of action for attorneys' fees and costs as provided by Sections 226 and 2699, and Code of Civil Procedure section 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

1 DATED: September 22, 2020

DIVERSITY LAW GROUP, P.C.

2 
By: _____

3 Larry W. Lee

4 Simon L. Yang

Attorneys for Plaintiff