

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BRITTNEY LEGASPI, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

MERCEDES DIAZ HOMES, INC., a
California Corporation; MDH SPECIALIZED
CARE HOMES 1, a California Corporation;
MDH SPECIALIZED CARE HOMES 2, a
California Corporation; MDH SPECIALIZED
CARE HOMES 3, a California Corporation;
and DOES 1 through 100,

Defendants.

Case No.: **20STCV45683**

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Brittney Legaspi (“Plaintiff”) on behalf of herself and all others similarly
2 situated, hereby brings this Representative Action against Defendants Mercedes Diaz Homes Inc.,
3 a California corporation, MDH Specialized Care Homes 1, a California Corporation, MDH
4 Specialized Care Homes 2, a California Corporation, MDH Specialized Care Homes 3, a
5 California Corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on
6 information and belief alleges as follows:

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8 **JURISDICTION**

9 1. Plaintiff, on behalf of herself and all similarly aggrieved employees, hereby brings
10 this representative action for recovery civil penalties under California Labor Code § 2698 *et seq.*
11 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
12 amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business,
17 have an agent or agents within the County of Los Angeles, and/or otherwise are found within the
18 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
19 service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the statute of limitations period,
23 Plaintiff was employed by Defendants as a non-exempt employee in Los Angeles County.

24 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
25 year preceding the date the California Labor and Workforce Development Agency (“LWDA”)
26 and Defendants were put on notice (and subsequent filing of this matter) and continuing to the
27 present, Defendants did (and continue to do) business within the County of Los Angeles and the
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1 State of California by operating an in-home health care and hospice services company and
2 therefore, were (and are) doing business in the County of Los Angeles and the State of California.

3 5. Plaintiff does not know the true names or capacities, whether individual, partner,
4 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
5 defendants are sued under such fictitious names. Plaintiff prays for leave to amend this
6 Representative Action Complaint when the true names and capacities are known. Plaintiff is
7 informed and believes, and based thereon alleges, that each fictitiously named defendant is and
8 was responsible in some way for the alleged wage and hour violations and other wrongful conduct
9 which subjected Plaintiff and the aggrieved employees, as defined below, to the illegal
10 employment practices, wrongs and injuries complained of herein. All references in this
11 Complaint to “Defendants” shall be deemed to include all DOE Defendants.

12 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
13 mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved
14 employees (as defined herein).

15 7. At all times herein mentioned, each of said Defendants participated in the doing
16 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
17 Defendants, and each of them, were the agents, servants, and employees of each and every one of
18 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
19 were acting within the course and scope of said agency and employment. Defendants, and each
20 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
21 omissions complained of herein.

22 8. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
26 aggrieved employees (as defined herein).

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10. During Plaintiff's employment with Defendants, Defendants regularly, systematically, and impermissibly rounded and/or truncated the hours worked by non-exempt employees in Defendants' favor, which resulted, over a period of time, in the failure to properly compensate them, including Plaintiff, for all hours worked, thereby depriving them of all required minimum and overtime wages earned. Specifically, Defendants required Plaintiff and other aggrieved employees to clock-in using a kiosk located at the care home facilities, which recorded their time worked to the minute, but Defendants' timekeeping mechanism failed to pay Plaintiff and other non-exempt employees for all hours that they worked "on-the-clock," whether by rounding and/or truncating of hours. Further, Defendants' rounding mechanism was not even-handed over time, as is required to be lawful. Additionally, on occasions, Plaintiff and other aggrieved employees would begin their shift outside of the care home, such as when they were required to pick up residents from various recreational facilities, but they could not clock-in until they arrived at the care home facilities. Upon information and belief, Defendants did not accurately record and compensate Plaintiff and other aggrieved employees for this time worked prior to arriving at the care home facilities. Therefore, Plaintiff and other aggrieved employees were not compensated for all hours actually worked, depriving them of all required minimum and overtime wages earned.

11. Defendants also required Plaintiff and other aggrieved employees to use their personal mobile phones for work related communications. Plaintiff and other aggrieved employees had an inherent requirement to use their personal mobile phones to communicate with supervisors, call doctors for residents, manage the schedule of the home, and engage in required company group chats with supervisors and coworkers. However, Defendants never reimbursed

1 Plaintiff for a reasonable portion of her cellular phone expenses, as mandated by *Cochran v.*
2 *Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014), and Labor Code § 2802.

3 12. Defendants also failed to provide Plaintiff and other non-exempt employees with
4 all required meal periods because, upon information and belief, Defendants did not maintain a
5 lawful meal period policy and failed to provide for duty-free meal periods to Plaintiff and other
6 non-exempt employees. Assuming *arguendo* that Plaintiff and Defendants entered into a lawful
7 written on-duty meal period agreement, such an agreement inherently concedes that the nature of
8 Plaintiff's work precluded duty-free rest periods.

9 13. Defendants also failed to provide Plaintiff and other non-exempt employees with
10 all required duty-free rest periods because, upon information and belief, Defendants did not
11 maintain a lawful rest period policy and the nature of the work being performed by Plaintiff and
12 other non-exempt employees did not permit for duty-free rest periods while working.
13 Additionally, despite Defendants' failure to provide Plaintiff with all meal and rest periods to
14 which she was legally entitled due to Defendants' uniform and unlawful policies and/or practices,
15 Defendants never provided Plaintiff with an hour of pay at her regular rate for each meal and rest
16 period violation as required by Labor Code § 226.7.

17 14. As a result of Defendants' failure to pay all earned minimum and overtime wages,
18 as well as meal and rest period premium wages, Defendants maintained inaccurate payroll
19 records, issued inaccurate wage statements to Plaintiff and other aggrieved employees, and failed
20 to pay all final wages owed to Plaintiff and other aggrieved employees upon their respective
21 separations from employment.

22 15. On approximately May 4, 2020, Plaintiff submitted a written personnel records
23 request to Defendants. Defendants failed to respond to Plaintiff's records request within 21 days
24 from the date of the request, in violation of Labor Code § 226(c).

25 16. Based on the foregoing, Plaintiff seeks to represent herself and all other aggrieved
26 employees, as defined by Labor Code § 2699(c), which includes all of Defendants' non-exempt
27 employees who worked for Defendants from September 1, 2019 through the present.
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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACTION**

3 **(AGAINST ALL DEFENDANTS)**

4 17. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 18. Defendants have committed several Labor Code violations against Plaintiff and
6 other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of
7 Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
8 representative action against Defendants to recover the civil penalties due to Plaintiff, other
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
10 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for
11 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
12 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
13 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
14 employee per pay period, plus an amount sufficient to recover the unpaid wages owed to each
15 aggrieved employee; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
16 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
17 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
18 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
19 subsequent violation per employee per pay period for those violations of the Labor Code for
20 which no civil penalty is specifically provided, based on the following Labor Code violations;

21 a. Defendants violated Labor Code §§ 510, 558, 1194 and 1198 by failing to pay
22 Plaintiff and other aggrieved employees all overtime compensation earned;

23 b. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by
24 failing to pay Plaintiff and other aggrieved employees the statutory minimum wage
25 for all hours worked;

26 c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide
27 meal periods as required by law and failing to pay meal period premiums to
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Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. Defendants violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Plaintiff and other aggrieved employees all required rest periods, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

e. Defendants violated Labor Code § 2802 and 2804 by failing to reimburse Plaintiff and other aggrieved employees for all necessary work expenses;

f. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month;

g. Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;

h. Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Plaintiff and other aggrieved employees; and

i. Defendants violated Labor Code §§ 558, 1174, and 1198 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees; and

j. Defendants violated Labor Code § 226 by failing to respond to Plaintiff and other aggrieved employees' requests to inspect and/or copy employment records.

19. On September 1, 2020, Plaintiff notified Defendant Mercedes Diaz Homes, Inc., via certified mail, and the LWDA via e-mail of Defendants' alleged California Labor Code violations and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to those violations identified herein. Now that sixty-five (65) days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under PAGA with respect to these violations.

20. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the

1 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
2 she is entitled to receive under California Labor Code § 2699.

3 **PRAYER**

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

6 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
7 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
8 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
9 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
10 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
11 unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
12 violation pursuant to Labor Code § 558 per employee per pay period, plus an amount sufficient
13 to recover the unpaid wages owed to each aggrieved employee; (3) \$100.00 for each initial
14 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
15 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
16 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
17 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
18 those violations of the Labor Code for which no civil penalty is specifically provided, based on
19 the violations of Labor Code sections cited in Paragraph 14 (a)-(g) above.;

20 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
21 2699(g), and Code of Civil Procedure § 1021.5; and

22 3. For such other and further relief, the Court may deem just and proper.

23
24 Dated: November 30, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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26 By:



Fletcher W. Schmidt
Attorneys for Plaintiff