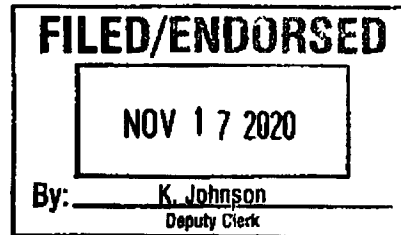


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11
12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SACRAMENTO**

15 FLORA CANDELARIA ALVAREZ, as an
16 individual and on behalf of all others
17 similarly situated,

18 Plaintiffs,

19 vs.

20 HEALTH NET OF CALIFORNIA INC.;
21 and DOES 1 through 50, inclusive,

22 Defendants.

Case No.: **34-2020-00289192**

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §§
226(a);
(2) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.*

DEMAND OVER \$25,000.00

Complaint Filed:

Trial Date:

None Set

ORIGINAL



1 Plaintiff FLORA CANDELARIA ALVAREZ (“Plaintiff”) hereby submits this Class
2 Action Complaint (“Complaint”) against Defendants HEALTH NET OF CALIFORNIA INC.
3 (“Health Net” or the “Company”) and Does 1 through 50 (hereinafter collectively referred to as
4 “Defendants”) as an individual and on behalf the class of all other similarly situated current and
5 former employees of Defendants for penalties under the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This class action is within the Court’s jurisdiction under California Labor Code
8 §§ 226, and the Private Attorneys General Act (“PAGA”), 2698, *et seq.*

9 2. This complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees in receiving overtime paid at the correct, higher regular
14 rate of pay and accurate itemized wage statements.

15 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 have engaged in, among other things a system of willful violations of the California Labor Code
17 by creating and maintaining policies, practices and customs that knowingly deny employees the
18 above stated rights and benefits.

19 **JURISDICTION AND VENUE**

20 5. The Court has jurisdiction over the violations of the California Labor Code
21 §§ 226, and 2698, *et seq.*

22 6. Venue is proper in this County because Plaintiff worked for Defendants in
23 Rancho Cordova, California, which is located in the County of Sacramento.

24 **PARTIES**

25 7. Plaintiff was employed by Defendants as a non-exempt employee beginning on or
26 about August 2012, in the position of CSR. Plaintiff is a current employee.

27 8. Plaintiff was and is the victim of the policies, practices, and customs of
28 Defendants complained of in this action in ways that have deprived them of the rights guaranteed

1 by California Labor Code §§ 226 and 2698, *et seq.*

2 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
3 Health Net is a California corporation operating in California.

4 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
6 individuals, and partnerships, licensed to do business and actually doing business in the State of
7 California. As such, and based upon all the facts and circumstances incident to Defendants'
8 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

9 11. Plaintiff does not know the true names or capacities, whether individual, partner
10 or corporate, of the Defendant sued herein as Does 1 through 50, inclusive, and for that reason,
11 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
12 complaint when the true names and capacities are known. Plaintiff is informed and believes and
13 based thereon alleges that each of said fictitious Defendants was responsible in some way for the
14 matters alleged herein and proximately caused Plaintiff and members of the general public and
15 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

16 12. At all times herein mentioned, each of said Defendants participated in the doing
17 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
18 Defendants, and each of them, were the agents, servants and employees of each of the other
19 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
20 acting within the course and scope of said agency and employment.

21 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
23 joint venturer of, or working in concert with each of the other co-Defendants and was acting
24 within the course and scope of such agency, employment, joint venture, or concerted activity.
25 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
26 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
27 Defendants.

28 14. At all times herein mentioned, Defendants, and each of them, were members of,

and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

15. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382. Plaintiff proposes the following Classes (collectively referred to as, the “Classes”):

- a. All non-exempt employees who were employed by Defendants in the State of California at any time from May 17, 2019, through the present and who were paid shift differential wages, including without limitation, incentive wages such as “Langprem” and “Langprem OT” Wages (“Total Hours Worked Class”);
- b. All non-exempt employees who were employed by Defendants in the State of California at any time from May 17, 2019, through the present and who were paid shift differential overtime wages, including, but not limited to, “Langprem OT” wages (the “Overtime Rate Statement Class”).

17. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to provide accurate, itemized wage statements in violation of Labor Code § 226.

18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above.

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the
2 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
3 actions in the past and currently have a number of wage-and-hour class actions pending in
4 California state and federal courts.

5 19. Defendants uniformly administered a corporate policy, practice of: (a) failing to
6 provide accurate, itemized wage statements in violation of Labor Code § 226 whenever Class
7 Members were paid shift differential wages and/or shift differential overtime wages.

8 20. Plaintiff is informed and believes, and based thereon alleges, that this corporate
9 conduct is accomplished with the advance knowledge and designed intent to willfully and
10 intentionally fail to accurately record proper rates of pay, hours worked, net wages, and
11 deductions.

12 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
13 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
14 Code §§ 226.

15 22. **Common Question of Law and Fact:** There are predominant common questions
16 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
17 concerning Defendant's policy and practice of: (a) failing to provide accurate, itemized wage
18 statements in violation of Labor Code § 226.

19 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
20 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
21 as the Class members. As with other non-exempt employees, Plaintiff did not receive accurate,
22 itemized wage statements when she was paid differential wages, including, but not limited to
23 "Langprem" and "Langprem OT" wages. In particular, whenever differential wages, including,
24 but not limited to "Langprem" and "Langprem OT" wages were paid, the wage statements issued
25 by Defendants identified the wrong total hours worked as it appears to show more hours than
26 were actually worked. Similarly, when the hours shown on the wage statements are added up,
27 they do not appear to add up to the actual total hours worked. In addition, whenever "Langprem
28 OT" wages were paid, which appears to be overtime wages, the rate of pay shown on the wage

statement appears as the regular rate of pay rather than 1.5 times the regular rate of pay. Therefore, Plaintiff is a member of the Classes and has suffered the alleged violations of California Labor Code § 226.

24. The California Labor Code and upon which Plaintiff bases these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

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

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

1 27. Such a pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation described herein is unlawful and creates an entitlement to
3 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
4 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
5 §§ 226 and Code of Civil Procedure § 1021.5.

6 28. Proof of a common business practice or factual pattern, which the named Plaintiff
7 experienced and is representative of, will establish the right of each of the members of the
8 Plaintiff Class to recovery on the causes of action alleged herein.

9 29. The Plaintiff Class is commonly entitled to a specific fund with respect to the
10 compensation illegally and unfairly retained by Defendants. The Plaintiff Class is commonly
11 entitled to restitution of those funds being improperly withheld by Defendants. This action is
12 brought for the benefit of the entire class and will result in the creation of a common fund.

13 **FIRST CAUSE OF ACTION**

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE § 226(a)**

16 **(BY PLAINTIFF AND THE CLASSES)**

17 30. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
18 fully set forth herein.

19 31. Defendants failed in their affirmative obligation to provide accurate itemized
20 wage statements. Defendants, as a matter of policy and practice, failed to provide accurate,
21 itemized wage statements to Plaintiff and the Class in violation of Labor Code § 226.

22 32. Plaintiff and the Class were paid hourly. As such, the wage statements should
23 have reflected the correct applicable hourly rates and total hours worked, pursuant to Labor Code
24 § 226(a). The wage statements provided to Plaintiff and the Class failed to identify such
25 information, including without limitation, the correct hourly rate for overtime hours and the
26 correct total number of hours worked. As such, the Company violated Labor Code § 226(a). For
27 example, when Plaintiff and the Classes were paid differential wages, including, but not limited
28 to "Langprem" and "Langprem OT" wages, the wage statements issued by Defendants identified

1 the wrong total hours worked as it appears to show more hours than were actually worked.
2 Similarly, when the hours shown on the wage statements are added up, they do not appear to add
3 up to the actual total hours worked. In addition, and as an independent violation of Section 226,
4 whenever “Langprem OT” wages were paid, which appears to be overtime wages, the rate of pay
5 shown on the wage statement appears as the regular rate of pay rather than 1.5 times the regular
6 rate of pay.

7 33. Such a pattern, practice and uniform administration of corporate policy as
8 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
9 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
10 including interest thereon, attorneys’ fees, and costs of suit according to the mandate of
11 California Labor Code § 226.

12 **SECOND CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

14 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

15 34. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
16 fully set forth herein.

17 35. As identified above, Defendants have violated Labor Code §§ 226 by failing to
18 provide accurate itemized wage statements.

19 36. Plaintiff brings this cause of action on behalf of the State of California and seeks
20 penalties on behalf of all Aggrieved Employees from May 19, 2019, through the present, for
21 Defendants’ violations of Labor Code § 226.

22 37. Because of Defendants’ violations of Labor Code § 226 Plaintiff is an “aggrieved
23 employee” as defined in Labor Code section 2699(a). As such, Plaintiff brings this cause of
24 action on behalf of the State of California for violations committed against all similarly situated
25 Aggrieved Employees of Defendants.

26 38. On or about November 13, 2020, Plaintiff sent written notice to the California
27 Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code
28

§§ 226, among other violations, pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act (“PAGA”).

39. As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in the written notice.

40. As such, pursuant to Labor Code section 2699(a), Plaintiff and the Aggrieved Employees may seek recovery of all applicable civil penalties on behalf of the State of California for Defendants’ violations of Labor Code § 226.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed classes and subclasses;
2. For an order appointing Plaintiff as the representative of the classes and subclasses as described herein;
3. For an order appointing Counsel for Plaintiff as class counsel;
4. Upon the First Cause of Action, for penalties and/or damages pursuant to California Labor Code § 226, and for costs and attorneys’ fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to Labor Code § 2698 *et seq.*, and for costs and attorneys’ fees;
6. On all causes of action for attorneys’ fees and costs as provided by California Labor Code §§ 226, 2698, *et seq.*, and Code of Civil Procedure § 1021.5; and
7. For such other and further relief the Court may deem just and proper.

DATED: November 17, 2020

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class