

From: Kelle Winter

Fax: 18553946767

To:

Fax: (510) 267-1546

Page: 4 of 15

03/17/2021 3:07 PM

FILED BY FAX

ALAMEDA COUNTY

March 18, 2021

CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy

CASE NUMBER:

RG21092158

Carolyn Hunt Cottrell (SBN 166977)
Kyle G. Bates (SBN: 299114)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100; Fax: (415) 421-7105
ccottrell@schneiderwallace.com
kbates@schneiderwallace.com

*Attorneys for Plaintiff, Aggrieved Employees,
and the State of California*

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

ILEANA SUSATEGUI, on behalf of the State
of California and Aggrieved Employees,

Plaintiffs,

vs.

PLUM HEALTHCARE GROUP LLC

Defendant.

Case No.

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a)
and (f) OF THE CALIFORNIA
PRIVATE ATTORNEYS GENERAL
ACT AND DEMAND FOR JURY
TRIAL**

1 Plaintiff Ileana Susategui (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, and complains and alleges as follows:

3 **INTRODUCTION**
4

5 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”)
6 enforcement action behalf of the State of California to collect statutory penalties as a result of
7 defendant Plum Healthcare Group LLC’s (“Defendant”) systematic violations of California
8 labor law with respect to Defendant’s current and former non-exempt hourly workers in the State
9 of California (“Aggrieved Employees”). Defendant maintains a longstanding policy and practice
10 of failing to properly compensate non-exempt hourly employees for missed meal and rest
11 periods, overtime, minimum wage, and all hours worked. These policies deny Plaintiff and
12 Aggrieved Employees lawful wages, as well as meal and rest periods that comply with California
13 law.

14 2. This PAGA action against Defendant challenges its policies and practices of (1)
15 failing to authorize and permit Plaintiff and Aggrieved Employees to take compliant meal breaks
16 which they are entitled by law; (2) failing to authorize and permit Plaintiff and Aggrieved
17 Employees to take rest breaks which they are entitled by law, (3) failing to compensate Plaintiff
18 and Aggrieved Employees for all hours worked, (4) failing to pay minimum wages, (5) failing
19 to provide overtime compensation, (6) failing to reimburse for necessary business expenditures,
20 (7) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements,
21 and (8) and failing to timely pay Plaintiff and Aggrieved Employees full wages upon termination
22 or resignation.

23 3. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
24 employees who have worked for Defendant as Nurses, Certified Nursing Assistants, Caretakers,
25 Dietary Aides, and other non-managerial service workers paid on an hourly basis. Defendant
26 supports an affiliated family of independently licensed and operated skilled nursing providers by
27 providing an array of administrative and consulting support services. Defendant employs non-
28

1 managerial workers in the State of California and uniformly classifies them as non-exempt from
2 overtime compensation under California law. On information and belief, Defendant employs
3 over 200 workers in the State of California.

4 4. Plaintiff worked as a Certified Nursing Assistant at Redwood Springs Healthcare
5 Center in Visalia, California from approximately October 2019 to April 2020. Ms. Susategui's
6 hourly rate of pay was \$13.75 per hour. While her schedule varied, Ms. Susategui typically
7 worked 12 hours per shift, and between 3 and 4 days per week. Ms. Susategui worked
8 approximately 36 to 40 hours per week.

9 5. Plaintiff files this action to recover all penalties, and other damages on behalf of
10 herself and Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices Defendant
11 has integrated across their facilities throughout California that have deprived Plaintiff and
12 Aggrieved Employees of their lawfully earned compensation and breaks.

13 **PARTIES**

14 6. Plaintiff Ileana Susategui is an individual over the age of eighteen, and at all times
15 mentioned in this Complaint was a resident of the State of California. Plaintiff was employed by
16 Defendant from approximately October 2019 until April 2020. Plaintiff worked for Defendant
17 as a Certified Nursing Assistant at Redwood Springs Healthcare Center in Visalia, California.

18 7. Defendant Plum Healthcare Group is a limited liability company located in San
19 Marcos, California, and is registered to do business in California. Defendant does business in the
20 State of California, including but not limited to its reliance on California's labor market to secure
21 the services of hourly workers. Defendant may be served with process by serving its registered
22 agent, Jennifer M. Sternshein, at 5316 E Chapman Ave, Orange, California, 92869.

23 8. Plaintiff is informed, believes, and thereon alleges that Defendant employs non-
24 exempt workers as Nurses, Nurse's Assistants, Dietary Aides, and other non-managerial positions
25 throughout California including in Alameda County. Defendant employs Plaintiff and the
26 Aggrieved Employees.
27
28

9. Plaintiff is informed, believes, and thereon alleges that Defendant directly controls the operations of its agents, managers, and employees throughout all its facilities in California.

10. At all relevant times, Defendant has done business under the laws of California, and has employed Aggrieved Employees in this judicial district. Defendant is a “person” as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendant is also an “employer” as that term is used in the Labor Code, and IWC Wage Orders.

JURISDICTION AND VENUE

11. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). Defendant conducts business, has jobsites, and employs Aggrieved Employees in this County, as a result, the causes of action asserted arose in whole or in part in this County.

12. This Court has jurisdictions over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because it is a limited liability company authorized to do business in the State of California, and because Defendant in fact does do business and employ workers in the State of California.

FACTUAL ALLEGATIONS

13. Defendant operates skilled nursing facilities throughout the United States and California, including the Redwood Springs Healthcare Center. On information and belief, Defendant employs over two hundred of hourly non-exempt workers across these facilities.

14. Plaintiff worked as a non-exempt Certified Nursing Assistant at the Redwood Springs Healthcare Center, a skilled nursing facility owned and operated by Defendant from approximately October 2019 to April 2020. Plaintiff earned \$13.75 per hour for approximately 36 to 48 hours of work per week. Her duties included taking patient vital signs, feeding, bathing, and dressing patients, serving meals, keeping rooms clean, setting up medical equipment, answering calls for help, and observing changes in a patient's condition or behavior.

15. Defendant employs non-managerial employees in the State of California and uniformly classifies them as non-exempt from overtime compensation under the California law.

1 16. Non-exempt, hourly workers employed by Defendant have a variety of
2 responsibilities. Employees clean patient rooms, communicate with doctors, administer medicine,
3 record medical history and symptoms, and perform diagnostic tests.

4 17. Pursuant to a uniform, companywide policy and practice, Defendant requires
5 Plaintiff and Aggrieved Employees to remain on duty throughout their scheduled shifts, including
6 during rest break periods. Specifically, Plaintiff and Aggrieved Employees are routinely denied
7 rest breaks because Defendant does not authorize permit, and/or make available timely rest breaks
8 periods. Additionally, Plaintiff and Aggrieved Employees are too busy with work during the day
9 to have time to take bona fide rest breaks. Plaintiff reports that Redwood Springs Healthcare
10 Center is severely understaffed, and that she and Aggrieved Employees are unable to take rest
11 breaks without leaving patients unattended. As a result, Plaintiff and Aggrieved Employees are
12 continuously on-call.

13 18. Despite these recurring violations, Defendant does not provide Plaintiff and
14 Aggrieved Employees with premium pay for missed rest periods.

15 19. Plaintiff is informed, believes, and thereon alleges that the same rest break policies
16 are used across all Defendant's facilities throughout California.

17 20. Defendant also does not permit Plaintiff and Aggrieved Employees to take
18 compliant meal break periods. Specifically, Plaintiff and Aggrieved Employees are routinely
19 denied timely meal breaks because Defendant does not authorize permit, and/or make available
20 timely meal break periods. Additionally, Plaintiff and Aggrieved Employees are too busy with
21 work during the day to have time to take bona fide meal breaks before the fifth hour of work.
22 Plaintiff and Aggrieved Employees regularly work through their unpaid meal breaks because they
23 are required to clock out for meal breaks yet remain on-duty and are subject to interruption
24 throughout these breaks.

25 21. Despite these recurring violations, Defendant does not provide Plaintiff and
26 Aggrieved Employees with premium pay for missed or untimely meal breaks.
27
28

1 22. Plaintiff is informed, believes, and thereon alleges that the same meal break
2 policies are used across all Defendant's facilities.

3 23. Plaintiff and Aggrieved Employees are required to work off-the-clock – time which
4 goes unrecorded and uncompensated. Aggrieved Employees are required to arrive before their
5 scheduled start times, in uniform, in order to stand in line to click-in for their shifts. Additionally,
6 Aggrieved Employees are required to assist with patients requiring urgent care after they clocked
7 out from their scheduled shift. Defendant also engage in wage theft by unlawfully rounding the
8 time clocked in for compensation purposes and failing to pay overtime compensation at the
9 regular rate of pay by not including non-discretionary incentive-based compensation in the
10 regular rate calculation.

11 23. Further, Defendant does not reimburse or compensate Plaintiff and Aggrieved
12 Employees for business related expenses incurred for Defendant's benefit. Plaintiff and
13 Aggrieved Employees are required to use their personal cell phones for work-related purposes,
14 purchase scrubs in compliance with the uniform policy, and are required to purchase protective
15 equipment using out of pocket funds. Defendant does not reimburse or compensate Plaintiff and
16 Aggrieved Employees for these business expenses.

17 23. Defendant's failure to compensate employees for missed meal and rest breaks also
18 results in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage
19 statements as required by California law. The wage statements are inaccurate because they do not
20 include premium pay for missed or untimely rest breaks.

21 24. Further, Defendant does not provide Aggrieved Employees, including Plaintiff,
22 whose employment has ended, with full payment of all wages owed at the end of their
23 employment. As these workers are owed premium pay when their employment ends, and these
24 amounts remain unpaid under Defendant's policies and practices, Defendant fails to pay all wages
25 due upon termination. As a consequence, Defendant is subject to waiting time penalties.

26 25. Defendant has employed several hundreds of employees during the four-year
27 period prior to the filing of this Complaint.
28

26. Defendant's method of paying Plaintiff and Aggrieved Employees was willful, and was not based on a good faith and reasonable belief that their conduct complied with California law.

27. Defendant's conduct was willful, carried out in bad faith, and caused significant damages to non-exempt hourly employees in an amount to be determined at trial.

FIRST CAUSE OF ACTION

Penalties Pursuant to § 2699(a) of the Private Attorneys General Act

28. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

29. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

30. Labor 226.7 Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he or she quits, at the latest.

31. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

32. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203."

33. Labor Code § 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

1 34. Labor Code § 226(a) provides:

2 Every employer shall, semimonthly or at the time of each payment of wages, furnish
3 each of his or her employees, either as a detachable part of the check, draft, or voucher
4 paying the employee's wages, or separately when wages are paid by personal check or
5 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
6 total hours worked by the employee, except for any employee whose compensation is
7 solely based on a salary and who is exempt from payment of overtime under
8 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
9 Commission, (3) the number of piece-rate units earned and any applicable piece rate
10 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
11 deductions made on written orders of the employee may be aggregated and shown as
12 one item, (5) net wages earned, (6) the inclusive dates of the period for which the
13 employee is paid, (7) the name of the employee and his or her social security number,
14 (8) the name and address of the legal entity that is the employer, and (9) all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee. The deductions made from payments of
17 wages shall be recorded in ink or other indelible form, properly dated, showing the
18 month, day, and year, and a copy of the statement or a record of the deductions shall
19 be kept on file by the employer for at least four years at the place of employment or at
20 a central location within the State of California.

21 35. Labor Code § 226.3 provides:

22 Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
23 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
24 in an initial citation and one thousand dollars (\$1,000) per employee for each violation
25 in a subsequent citation, for which the employer fails to provide the employee a wage
26 deduction statement or fails to keep the records required in subdivision (a) of Section
27 226. The civil penalties provided for in this section are in addition to any other penalty
28 provided by law.

29 36. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
30 by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved
31 Employees in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of
32 employment to Plaintiff and Aggrieved Employees in compliance with Labor Code § 203.

33 37. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
34 failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate,
35 itemized wage statement in compliance with Labor Code § 226(a).

36 38. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
37 violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days

1 of work in any order of the IWC.

2 39. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
3 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim.
4 Ninety-four calendar days have passed without notice from the LWDA. Plaintiff satisfied the
5 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

6 40. Plaintiff seeks the aforementioned penalties on behalf of the State, other
7 Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

8 41. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of
9 California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also
10 entitled to an award of attorneys’ fees and costs as set forth below.

11 42. Wherefore, Plaintiff requests relief as hereinafter provided.

12
13 **SECOND CAUSE OF ACTION**
Penalties Pursuant to § 2699(f) of the Private Attorneys General Act

14 43. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
15 forth herein.

16 44. Labor Code § 2699(f) provides:

17
18 For all provisions of this code except those for which a civil penalty is specifically
19 provided, there is established a civil penalty for a violation of these provisions, as
20 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
21 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
22 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
23 employee per pay period for each subsequent violation.

24 45. Labor Code § 200 defines wages as “all amounts for labor performed by
25 employees of every description, whether the amount is fixed or ascertained by the standard of
26 time, task, piece, commission basis or method of calculation.”

27 46. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
28 employment are due and payable twice during each calendar month....”

47. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked as “the
Time during which an employee is subject to the control of an employer, and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.”

2 48. Labor Code § 1198 makes it unlawful for employers to employ employees
3 under conditions that violate the Wage Order.

4 49. Labor Code § 2802 requires employers to indemnify employees for all
5 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
6 of his or her duties.

7 50. To the extent than any violation alleged herein does not carry penalties under
8 Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for
9 Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the
10 amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code §
11 2699(f) for Defendant’s violations of Labor Code §§ 1182.12, 1194, 1197, 204, and 2802.

12 51. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the
13 LWDA with notice of his intention to file this claim. Ninety-four calendar days have passed
14 without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence
15 this civil action in compliance with § 2699.3(a).

16 52. Plaintiff seeks the aforementioned penalties on behalf of the State, other
17 Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

18 53. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of
19 California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also
20 entitled to an award of attorneys’ fees and costs as set forth below.

21 54. Wherefore, Plaintiff requests relief as hereinafter provided.

22 **PRAYER FOR RELIEF**

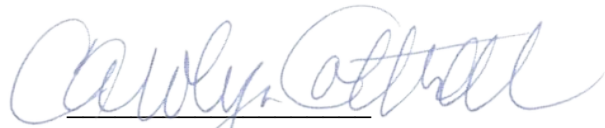
23
24 WHEREFORE, Plaintiff prays for relief as follows:

- 25 1. For the Court to declare, adjudge, and decree that Defendant has violated the
26 California Labor Code as alleged herein;
27 2. For an order awarding the State of California, Plaintiff, and Aggrieved
28 Employees civil penalties provided under the PAGA;

3. For an award of reasonable attorneys' fees as provided by the California Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
4. For interest on penalties awarded as provided by applicable law;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Dated: March 17, 2021

Respectfully submitted,



Carolyn Hunt Cottrell
Kyle G. Bates
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiff, Aggrieved Employees, and
the State of California