

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**

MARIA GARCIA,

Plaintiff,

vs.

SUMMER BREEZE HOSPICE AND
PALLIATIVE CARE, INC.;
WELLINGTON CARLOS;
LOURDES MENDOZA; and
DOES 1 to 25, inclusive

Defendants.

) CASE NO.: 21STCV26651

)
) **COMPLAINT FOR DAMAGES FOR:**

-) 1) **FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) 2) **FAILURE TO PAY MINIMUM**
) **WAGES**
) 3) **FAILURE TO PAY OVERTIME;**
) 4) **FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) 5) **FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) 6) **FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) 7) **VIOLATION OF LABOR CODE**
) **SECTION 558;**
) 8) **FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**
) 9) **FAILURE TO GIVE REST BREAKS;**
) 10) **FAILURE TO GIVE MEAL BREAKS**
) 11) **PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) 12) **FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**
) 13) **VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

1 COMES NOW Plaintiff, MARIA GARCIA (hereinafter "Plaintiff"), and alleges as
2 follows:

3 **PARTIES, JURISDICTION, VENUE**

4 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in
5 County of Los Angeles in this judicial district because Defendants SUMMER BREEZE
6 HOSPICE AND PALLIATIVE CARE, INC.; WELLINGTON CARLOS; LOURDES
7 MENDOZA; and DOES 1 to 25, inclusive do business in the County of Los Angeles and
8 because Defendants' obligations and liabilities arise therein, and because the work that was
9 performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover,
10 Plaintiff's damages sought herein exceed \$25,000.

12 2. Plaintiff is a female resident of the County of Los Angeles, State of California.

13 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
14 SUMMER BREEZE HOSPICE AND PALLIATIVE CARE, INC. is and was a California
15 corporation, doing business in Los Angeles County, and which employed Plaintiff.

16 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
17 WELLINGTON CARLOS is male resident of the County of Los Angeles, State of California,
18 and the owner and managing agent of SUMMER BREEZE HOSPICE AND PALLIATIVE
19 CARE, INC. Plaintiff is informed and believes and thereon alleges that WELLINGTON
20 CARLOS managed and was directly involved in the day-to-day operations of SUMMER
21 BREEZE HOSPICE AND PALLIATIVE CARE, INC. and is being included in this lawsuit
22 pursuant to Labor Code Section 558.1 as he controlled the wages, hours, and working
23 conditions of Plaintiff and others similarly situated.

24 5. Plaintiff is informed and believes that at all times herein mentioned, Defendant
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1 LOURDES MENDOZA is female resident of the County of Los Angeles, State of California,
2 and the owner and managing agent of SUMMER BREEZE HOSPICE AND PALLIATIVE
3 CARE, INC. Plaintiff is informed and believes and thereon alleges that LOURDES
4 MENDOZA managed and was directly involved in the day-to-day operations of SUMMER
5 BREEZE HOSPICE AND PALLIATIVE CARE, INC. and is being included in this lawsuit
6 pursuant to Labor Code Section 558.1 as she controlled the wages, hours, and working
7 conditions of Plaintiff and others similarly situated SUMMER BREEZE HOSPICE AND
8 PALLIATIVE CARE, INC., WELLINGTON CARLOS, and LOURDES MENDOZA are
9 hereinafter collectively referred to as "SUMMER BREEZE" or "Defendant(s)".
10

11 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
12 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
13 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
14 defendants, numbers 1 to 25, reside in the State of California and are in some manner
15 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
16 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
17 and capacities of these fictitiously named defendants.
18

19 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
20 that information and belief, alleges that at all times herein mentioned, each of the remaining
21 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
22 under the authority of their agency, employment, or representative capacity, with the consent
23 of his/her codefendants.
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25 GENERAL ALLEGATIONS

26 8. Plaintiff started working for SUMMER BREEZE on or around November 2018 as a
27 licensed vocational nurse. Plaintiff worked for SUMMER BREEZE from the time of her hire
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1 until on or around March 2021, when her employment ended.

2 9. Plaintiff was classified as an hourly, non-exempt employee while working for
3 SUMMER BREEZE.

4 10. Plaintiff generally worked 5 days per week (on Wednesdays, Plaintiff would often do
5 case management at the office).

6 11. It is Plaintiff's position that SUMMER BREEZE has violated numerous Labor Code
7 Sections against Plaintiff and other similarly situated aggrieved employees.

8 12. SUMMER BREEZE did not provide Plaintiff and other similarly situated aggrieved
9 employees with the minimum wages to which they were entitled for work performed and as
10 such did not compensate Plaintiff and others for all hours worked at the minimum wage rate
11 pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because Plaintiff
12 and others would often perform work outside of the normal business hours, including
13 answering phone calls on the weekends or after their shifts had ended from either patients or
14 patients' families. Moreover, Plaintiff would often continue working from home on a daily
15 and weekly basis in terms of inputting medications and documents into the system. Plaintiff
16 and other nurses had no time to change or update plans of care while dealing with the patients,
17 because they had to wait for doctor's orders. Those orders would not come in until later. As
18 such, once a doctor places an order, Plaintiff and others would have to call the pharmacy
19 and update the "plan of care", even if this was after normal work hours. Furthermore, there was
20 no real clock-in/clock out system that was actually utilized. Furthermore, the "Hospice MD"
21 application would be the platform on which Plaintiff would input notes and that application
22 would also keep track of Plaintiff's schedule, including how many patients she saw and her
23 overall schedule. To the extent that SUMMER BREEZE deducted any meal breaks allegedly
24 taken, this would also be a minimum wage violation since Plaintiff never took uninterrupted
25 meal periods wherein she was relieved of all work duties. Plaintiff and others were also not
26 paid for all hours worked in violation of Labor Code Section 1194 and the applicable Industrial
27 Welfare Commission Wage Order due to SUMMER BREEZE rounding down the actual hours
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1 worked as a part of their business practice, which disproportionately affected the employees
2 and resulted in less working hours and less pay.

3 13. Due to the “off the clock” work as alleged above, SUMMER BREEZE violated Labor
4 Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees the
5 correct amount of overtime, even though they worked more than 8 hours per day, 12 hours per
6 day and/or 40 hours per week throughout their employment. Plaintiff’s and others’ actual work
7 hours entitled them to overtime compensation (both daily and weekly), especially due to the “off
8 the clock” as described above, however, they were not paid accurately and fully for their
9 overtime hours worked. In fact, it seems like it was company policy not to pay overtime at all,
10 no matter how long an employee such as Plaintiff worked. It was actually standard practice
11 at the company to completely disregard overtime hours and overtime compensation.

12 14. SUMMER BREEZE also violated Labor Code § 226.7 and the applicable Industrial
13 Welfare Commission Wage Order (no. 5) because it failed to provide Plaintiff and others with
14 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their
15 employment. SUMMER BREEZE did not completely relieve Plaintiff and others of all duty
16 during said rest periods. SUMMER BREEZE did not pay to Plaintiff and others one additional
17 hour of pay at Plaintiff’s regular rate of compensation for each workday that one or more
18 statutory rest periods was not provided. It was not company policy and not part of the company
19 culture for employees such as Plaintiff and the other Aggrieved Employees to take rest breaks.
20 They were understaffed and were responsible for taking care of too many patients. There was
21 simply no time and no occasions to take rest breaks wherein they are relieved of all work duties
22 as Plaintiff has to see patients and then get in her personal vehicle and get to the next patient
23 ASAP as Plaintiff and others had a prepared schedule of patients. Moreover, Plaintiff and others
24 are not able to walk away from patients in the middle of their care as they cannot leave patients
25 alone. As such, the culture and work environment at SUMMER BREEZE did not lend itself to
26 the employees receiving statutory breaks wherein they were relieved of all work duties. It was
27 the normal practice and custom of SUMMER BREEZE not to authorize, permit, and enforce
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1 statutory rest periods. As such, the work environment and culture at SUMMER BREEZE was
2 not conducive to receiving statutory rest breaks under California law.

3 15. SUMMER BREEZE violated Labor Code §§ 512 and 226.7 along with the applicable
4 Industrial Welfare Commission Wage Order (no. 5) because it failed to provide Plaintiff and
5 others the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work
6 throughout their employment. SUMMER BREEZE did not completely relieve our client and
7 others of all duty during said meal periods. SUMMER BREEZE did not pay to our client and
8 others one additional hour of pay at our client's regular rate of compensation for each workday
9 that one or more statutory meal periods was not provided. Furthermore, as alluded to above,
10 and due to the understaffing and the enormous amount of work to be performed, including
11 always being "on the go" and going from patient to patient, it was common practice and
12 standard for the hourly, non-exempt employees, including Plaintiff to not receive statutory
13 meal breaks. Plaintiff would often times be forced to eat in her car while driving to another
14 patient. There was no time and no occasion for Plaintiff to be able to take an uninterrupted 30-
15 minute meal period and management was unequivocally aware of this. Moreover, Plaintiff and
16 others also did not receive a second, timely, uninterrupted meal period if they worked shifts of
17 10 hours or more. Furthermore, it is also true that since Plaintiff was not able to take meal
18 breaks, she did not receive any meal breaks before the 5th hour worked. It was the normal
19 practice and custom of SUMMER BREEZE not to authorize, permit, and enforce statutory
20 meal periods. As such, the work environment and culture at SUMMER BREEZE was not
21 conducive to receiving statutory meal breaks under California law.

22 16. Furthermore, during the relevant time period and due to the above-mentioned violations,
23 SUMMER BREEZE failed to pay Plaintiff and others all wages due to them within any time
24 period specified by California Labor Code section 204.

25 17. SUMMER BREEZE was also in violation of California Labor Code section 226(a), by
26 failing to include pertinent information on the wage statements, including but not limited to, all
27 hours worked (minimum wages and overtime due to the "off the clock" work), gross wages
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1 earned, net wages earned, total pay, the correct legal name and address of the employing entity,
2 the correct start and end of the pay period, all applicable hourly rates, itemized deductions, and
3 premium pay for the missed meal and rest breaks, among others. As such, SUMMER BREEZE
4 did not provide Plaintiff and other similarly situated aggrieved employees with complete,
accurate itemized wage statements.

5 18. During the relevant time period, SUMMER BREEZE also failed to keep accurate and
6 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
7 and others pursuant to California Labor Code sections 1174(d). As alluded to above, although
8 SUMMER BREEZE was trying to implement a clock-in/clock-out, one was not necessarily
9 utilized during Plaintiff's employment tenure.

10 19. SUMMER BREEZE also violated Labor Code § 203 because it willfully failed to pay
11 other similarly situated aggrieved employees earned and due wages upon separation of
12 employment, either immediately upon involuntary termination, or within 72 hours of
13 resignation. These earned but unpaid wages include minimum wages, overtime compensation,
14 premium pay for missed meal and rest breaks, and business expense reimbursement. In fact,
15 Plaintiff did not receive her full and final paycheck as her final check was reduced by an
16 alleged "loan" that was given to her. Per California law, including Labor Code Section 221, an
17 employer is not allowed to deduct money from an employee's pay unless there is a written
18 authorization to do so. As such, SUMMER BREEZE should have provided Plaintiff with
19 her full and final paycheck for wages actually earned.

20 20. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
21 business-related expenses and costs that were not reimbursed by SUMMER BREEZE. These
22 costs include, but are not limited to, use of personal cell phones for work purposes, including
23 navigating on "Hospice MD", and gas/mileage reimbursement. Before providing employees
24 with a "gas card", the company provided employees with maintenance money (\$500 for the
25 entire month for gas and other items), which was not sufficient to cover the expenses. At some
26 point, the company had revoked the maintenance money and not a provided a gas card either.
27 Note that it was entirely common for nurses to travel hundreds of miles per day. In addition,
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1 Plaintiff and others purchased their own equipment for work purposes, including blood
2 pressure cuffs, thermometers, stethoscopes, uniforms/gowns, gloves, sanitizers, and other such
3 items. Accordingly, SUMMER BREEZE was in violation of California Labor Code sections
4 2800 and 2802.

5 21. During the relevant time period, SUMMER BREEZE also failed to keep accurate and
6 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
7 and others pursuant to California Labor Code sections 1174(d). As alluded to above, although
8 SUMMER BREEZE was trying to implement a clock-in/clock-out, one was not necessarily
9 utilized during Plaintiff's employment tenure.

10 22. During the relevant time period, SUMMER BREEZE failed to provide sick pay
11 pursuant to Labor Code section 246 and also failed to provide Worker's Compensation
12 coverage for Plaintiff and other aggrieved employees in violation of Labor Code Section
13 3700.5.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

16 **(California Industrial Welfare Commission Order 4/5-2001, California Code of**
17 **Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 23. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.

21 24. At all times relevant herein, Defendants were required to compensate its employees
22 for all hours worked upon reporting for work at the appointed time stated by the employer
23 pursuant to Industrial Welfare Commission Order 4/5-2001, California Code of Regulations,
24 Title 8, Section 11040/11050.

25 25. For the three (3) years preceding filing of this action, Defendants failed to compensate
26 Plaintiff for all hours worked.

27 26. Under the aforementioned wage order and regulations, Plaintiff is to recover
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1 compensation for all hours worked but not paid by Defendants for the three (3) years
2 preceding the filing of this Complaint.

3 27. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
4 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
5 this Court.

6 28. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194,
7 and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
8 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
9 reasonable attorney's fees and costs of suit.

10 29. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
12 amount known to Plaintiff once she has obtained all of her payroll records from Defendants.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(California Labor Code Sections 1194, 1194.2, 1197)**

16 **(Plaintiff against all named defendants and all DOE defendants)**

17 30. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.

19 31. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an
20 employer to suffer or permit a California employee to work without paying wages at the
21 minimum wage rate for all hours worked as required by the applicable Industrial Welfare
22 Commission Wage Order No. 4/5-2001, codified at California Code of Regulations,
23 Title 8, Section 11040/11050, subdivision 4.

24 32. Pursuant to IWC Wage Order no. 4/5-2001, subdivision 2(K), at all relevant times,
25 "hours worked" included "the time during which an employee is subject to the control of an
26 employer, and includes all the time the employee is suffered or permitted to work, whether or
27 not required to do so..."
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1 33. During her employment, Plaintiff was regularly required as a matter of uniform
2 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
3 was paid less than the minimum wage rate by Defendants for hours worked in violation of
4 California Labor Code Section 1197 and the applicable California Industrial Wage
5 Commission wage order(s).

6 34. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
7 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
8 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
9 to believe that their acts or omissions were not contrary to California law.

10 35. For all hours worked by Plaintiff for which she was paid less than the minimum wage
11 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
12 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
13 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
14 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

15 36. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(California Industrial Welfare Commission Order 4/5-2001, California Code of**
21 **Regulations Title 8 Section 11040/11050)**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23 37. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 36, inclusive, of this Complaint as though fully set forth herein.

25 38. Pursuant to Industrial Welfare Commission 4-2001/5-2001, California Code of
26 Regulations, Title 8, Section 11040/11050 for the period of Plaintiff's employment,
27 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
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1 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
2 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
3 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
4 consecutive work day in a week.

5 39. Plaintiff was a non-exempt employee entitled to the protections of the California
6 Industrial Welfare Commission Order No. 4-2001/5-2001, California Code of Regulations,
7 Title 8, Section 11040/11050.

8 40. Plaintiff worked more than eight (8) hours or twelve (12) hours in a single workday or
9 forty (40) hours in a single workweek on numerous occasions.

10 41. Plaintiff was entitled to the above overtime premiums.

11 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
12 Plaintiff's regular rate of pay for hours worked past eight (8) in a day and two-times Plaintiff's
13 regular rate of pay for hours worked past twelve (12) in a day.

14 43. Defendants did not pay Plaintiff premium wages of at least one and one-half times
15 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

16 44. Plaintiff worked at least one pay period in which she was not properly paid overtime
17 within the three (3) years prior to the initiation of this lawsuit.

18 45. Defendants know or should know the actual dates of overtime worked, the amount of
19 overtime worked, and the amount of unpaid overtime due.

20 46. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
21 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
22 Court.

23 47. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
24 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
25 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
26 reasonable attorney's fees and costs of suit.

27 48. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at

trial.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

49. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 48, inclusive, of this Complaint as though fully set forth herein.

50. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

51. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, gross wages earned, including overtime, net wages earned, total hours worked by the employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

52. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

53. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

54. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at

1 trial.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

4 **(California Labor Code Section 204)**

5 **(Plaintiff against all named defendants and all DOE defendants)**

6 55. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth herein.

8 56. California Labor Code Section 204 establishes the fundamental right of all employees
9 in the State of California to be paid wages in a timely fashion for their work.

10 57. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
11 full amount of all owed wages when due as required by California Labor Code Section 204.

12 58. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
13 informed, believes, and thereon alleges, that all times relevant during the liability period,
14 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
15 including overtime hours and premium pay for missed rest breaks and meal breaks.

16 59. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
17 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
18 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
19 from Defendants' records or indirectly based on information from Defendants' records.

20 60. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
22 trial.

23 **SIXTH CAUSE OF ACTION**

24 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

25 **(California Labor Code Sections 201, 202, 203)**

26 **(Plaintiff against all named defendants and all DOE defendants)**

1 61. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 60, inclusive, of this Complaint as though fully set forth herein.

3 62. Pursuant to California Labor Code Section 201(a), an employer who discharges an
4 employee must immediately pay for all compensation due and owing.

5 63. Pursuant to California Labor Code Section 202, when an employee resigns, the
6 employer must pay all compensation due and owing within 72 hours of resignation, or on the
7 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

8 64. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
9 without abatement or reduction, any wages of an employee whose employment ends, the wages
10 of the employee shall continue as a penalty from the due date at the same rate until paid or until
11 an action is commenced; however, the wages shall not continue for more than 30 days for
12 failure to pay an employee owed wages.

13 65. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
14 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

15 66. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
18 preceding the filing of this lawsuit.

19 67. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
20 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
21 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

22 68. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial.

25 **SEVENTH CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE SECTION 558**

27 **(California Labor Code Section 558)**

(Plaintiff against all named defendants and all DOE defendants)

69. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

70. California Labor Code Section 558 states that any person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was filed.

71. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus, Defendants are subject to civil penalties under the following laws:

- a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular wages, including overtime wages for overtime hours worked and premium pay for missed meal breaks and rest breaks. As such, Defendants violated Section 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiff was underpaid in addition to an amount sufficient to recover underpaid wages.
- b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiff's prosecution of this cause of action under California Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not paying Plaintiff for all hours worked, her overtime hours worked, and premium pay

for missed meal breaks and rest breaks.

- c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiff's prosecution of this cause of action under California Labor Code Sections 200, et seq.

72. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

73. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs and attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

EIGHTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(California Labor Code Section 1174(d))

(Plaintiff against all named defendants and all DOE defendants)

74. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.

75. Labor Code section 1174(d) requires that employers, including Defendants, maintain accurate records showing the hours worked daily by its employees and to whom wages were paid.

76. Additionally, the "Records" section of the applicable IWC Wage Order obligates the employer, including Defendants, to keep accurate information with respect to each one of their employees including, but not limited to, the total wages paid each payroll period, and time records showing when the employee begins and ends each work period, meal periods, split shift intervals; the total daily hours worked; the total hours worked in the payroll period, and the applicable rates of pay.

77. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by Labor Code section 1174(d) is subject to a penalty. On information and belief, Defendants intentionally failed to maintain accurate

1 records of Plaintiff's total daily hours, including rest breaks and meal breaks, the total hours
2 worked in the payroll period, the applicable rates of pay, and total wages earned for the payroll
3 period.

4 78. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
5 continues to suffer substantial losses related to Defendants' failure to record and maintain
6 records of meal and rest periods as well as time records.

7 79. Plaintiff seeks all available remedies for Defendants' violations including, but not
8 limited penalties, and costs to the extent permitted by law and according to proof at trial.

9 **NINTH CAUSE OF ACTION**

10 **FAILURE TO GIVE REST BREAKS**

11 **(Plaintiff against all named defendants and all DOE defendants)**

12 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

14 81. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 15 a. Title 8 of the California Code of Regulations Sections 11040/11050(12)(A), which
16 provides that every employer shall authorize and permit all employees to take rest
17 periods, which insofar as practicable shall be in the middle of each work period.
18 The authorized rest period time shall be based on the total hours worked daily at the
19 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
20
21 b. Title 8 of the California Code of Regulations Sections 11040/11050(12)(B), which
22 provides that if an employer fails to provide an employee a rest period in
23 accordance with the applicable provisions of this order, the employer shall pay the
24 employee one (1) hour of pay at employee's regular rate of compensation for each
25 workday that the rest period is not provided;
26
27 c. Title 8 of the California Code of Regulations sections 11040/11050(20)(A), which
28

1 penalizes the employer \$50.00 for each initial violation, per employee, of any
2 provision of the Wage Order, and \$100.00 for each additional violation thereafter
3 per employee; and

- 4 d. California Labor Code section 226.7, which states that (a) no employer shall require
5 any employee to work during any rest period mandated by an applicable order of
6 the Industrial Welfare Commission, and (b) if an employer fails to provide an
7 employee a rest period in accordance with an applicable order of the Industrial
8 Welfare Commission, the employer shall pay the employee one (1) additional hour
9 of pay at employee's regular rate of compensation for each work day that the rest
10 period is not provided.
11

12 82. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute
13 rest break after every four (4) hours of work or major fraction thereof, as required by California
14 law.
15

16 83. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
17 regulations, and wage orders alleged in this cause of action along with any allowable interest,
18 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
19 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

20 84. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
21 fees as well as interest under Labor Code section 218.6.

22 85. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial.
25

26 **TENTH CAUSE OF ACTION**

27 **FAILURE TO GIVE MEAL BREAKS**

28 **(Plaintiff against all named defendants and all DOE defendants)**

1 86. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 85, inclusive, of this Complaint as though fully set forth herein.

3 87. Plaintiff brings this cause of action under the following laws, for the following
4 reasons:

- 5 a. California Labor Code section 512(a), which requires that employees be given a 30-
6 minute uninterrupted meal break after five (5) hours of work, and a second
7 uninterrupted meal break after ten (10) hours of work;
- 8 b. California Labor Code section 226.7, which states that (a) no employer shall require
9 any employee to work during any meal period mandated by an applicable order of
10 the Industrial Welfare Commission, and (b) if any employer fails to provide an
11 employee a meal period in accordance with an applicable order of the Industrial
12 Welfare Commission, the employer shall pay the employee one (1) additional hour
13 of pay at the employee's regular rate of compensation for each workday that the
14 meal period is not provided;
- 15 c. California Industrial Welfare Commission Order No. 4/5 section 11(B), as codified
16 under Title 8 of the California Code of Regulations Section 11040/11050, which
17 states that if an employer fails to provide an employee a meal period in accordance
18 with the applicable provisions of the Wage Order, the employer shall pay the
19 employee one (1) hour of pay at the employee's regular rate of compensation for
20 each workday that the meal period is not provided;
- 21 d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3), as
22 codified under Title 8 of the California Code of Regulations Section 11040/11050,
23 which requires an employer to maintain records documenting its employees' meal
24 periods;
25
26
27
28

- 1 e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A), as
2 codified under California Code of Regulations Section 11040/11050, which
3 penalizes the employer \$50.00 for each initial violation, per employee, of any
4 provision of the Wage Order, and \$100.00 for each additional violation thereafter
5 per employee; and
6
7 f. California Labor Code section 1171 and 1173, which have given the California
8 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
9 and 5) as enforceable law.

10 88. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
11 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
12 to take a second relieved meal break after ten (10) hours of work, as required by California
13 law. California Labor Code section 512(a) and California Industrial Welfare Commission
14 Order No. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq.
15 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
16 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
17 all work duty. California Labor Code section 226.7 provides that employers may not require
18 their employees to work through their meal periods. California Labor Code section 226.7 and
19 California Code of Regulations section 11040/11050 requires that if the employer fails to
20 provide the employee with an uninterrupted meal period, the employer must pay the employee
21 one (1) hour of pay for each work day that the meal period is not given.
22

23 89. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
24 regulations, and wage orders alleged in this cause of action along with any allowable interest,
25 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
26 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
27

28 90. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's

1 fees as well as interest under Labor Code section 218.6.

2 91. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
4 trial.

5 **ELEVENTH CAUSE OF ACTION**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
8 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5,**
9 **1194, 1197.1, 1198, 2802, and 3700.5)**

10 **(Against All Named Defendants and all DOE Defendants)**

11 92. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 91, inclusive, of this Complaint as though fully set forth herein.

13 93. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
14 Defendants of the specific violations of the California Labor Code that Defendants and DOE
15 defendants have violated and continue to violate.

16 94. Pursuant to California Labor code section 2699.3, no response was received from the
17 LWDA within 65 days of the postmark date of the above-alleged letter.

18 95. Plaintiff therefore has exhausted all administrative remedies required of her under
19 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
20 cause of action and pursue penalties in a representative action for Defendants' violations of the
21 Labor Code.

22 96. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
23 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
24 departments, divisions, commissions, boards, agencies, or employees for violation of the code
25 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
26 on behalf of himself or herself and other current or former employees pursuant to the
27 procedures specified in California Labor Code section 2699.3.
28

1 97. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
2 violator and had one or more of the alleged violations committed against her, and therefore is
3 properly suited to represent the interests of other current and former employees, including all
4 current and former hourly, non-exempt employees who worked for SUMMER BREEZE in the
5 State of California during the applicable PAGA Period.

6 98. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
7 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
8 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

9 99. Plaintiff therefore has exhausted all administrative remedies required of her under
10 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
11 cause of action and pursue penalties in a representative action for Defendants’ violations of the
12 Labor Code.

13 100. California Labor Code section 2699 et seq. imposes penalties upon culpable
14 Defendants for violating the Labor Code.

15 101. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
16 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
17 seeking individual/victim specific relief or underpaid wages for herself or other employees
18 under this specific PAGA cause of action. Plaintiff has separate causes of action in this
19 Complaint for individual wages but is not seeking wages through the PAGA action.

20 102. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
21 the following:

22 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210,
23 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, 3700.5
24 via 2698 and 2699, 3700.5, and any other Labor Codes/Industrial Welfare Commission
25 Orders (4 or 5) violated based on the facts alleged in this Complaint.

26 103. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s fees,
27 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
28 employees as alleged herein in an amount to be shown according to proof at trial and within the

jurisdictional limits of this Court.

TWELFTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Plaintiff against all named Defendants and DOE Defendants, and each of them)

104. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 103, inclusive, of this Complaint as thought fully set forth herein.

105. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

106. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendants, Plaintiff and the others incurred reasonable and necessary expenses in the course of completing her job duties, which were not reimbursed by Defendants. These costs include, but are not limited to, use of personal cell phones for work purposes, including navigating on “Hospice MD”, and gas/mileage reimbursement. Before providing employees with a “gas card”, the company provided employees with maintenance money (\$500 for the entire month for gas and other items), which was not sufficient to cover the expenses. At some point, the company had revoked the maintenance money and not a provided a gas card either. Note that it was entirely common for nurses to travel hundreds of miles per day. In addition, Ms. Garcia and others purchased their own equipment for work purposes, including blood pressure cuffs, thermometers, stethoscopes, uniforms/gowns, gloves, sanitizers, and other such items.

107. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code section 2802.

THIRTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against All Named Defendants and all DOE defendants)

108. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 107, inclusive, of this Complaint as though fully set forth herein.

109. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant constitutes unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

110. Defendants' violations of California labor laws and the labor code, as alleged above constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and other similarly situated aggrieved employees.

111. For the four years preceding the filing of this action, Plaintiff has suffered damages and request damages and/or restitution of all monies and profits to be disgorged from Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

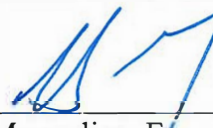
WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

1. For special and consequential damages to Plaintiff in an amount subject to proof at trial;
2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
5. For restitution and disgorgement for all unfair business practices by SUMMER BREEZE against Plaintiff in an amount subject to proof at trial;

6. For an order enjoining SUMMER BREEZE from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
9. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and Representative PAGA claim/action;
10. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
11. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
16. For such other and further relief as this Court may deem proper.

DATED: July 20, 2021

MESSRELIAN LAW INC.

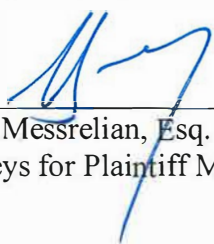
By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Maria Garcia

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: July 20, 2021

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Maria Garcia