

Filed
Superior Court of California,
Sacramento
09/18/2023
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By _____, Deputy
34-2021-00305108-CU-OE-GDS

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 ANDREA WALKER,

11 Plaintiff,

12 vs.
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14 YAN KALIKA DENTAL CORPORATION, a
California Corporation;
15 YAN KALIKA, an individual; and
16 DOES 1 to 100, inclusive,

17 Defendants.
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Case No. 34-2021-00305106

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND CIVIL PENALTIES:**

1. Private Attorneys General Act
2. Failure to Pay Overtime Wages
3. Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof
4. Failure to Provide Accurate Wage Statements
5. Failure to Pay Final Wages
6. Failure to Pay Reimbursements for Expenses
7. Unfair Competition

BY FAX

1 Plaintiff ANDREA WALKER ("Plaintiff"), on behalf of herself and Aggrieved Employees,
2 hereby files this Complaint against Defendants YAN KALIKA DENTAL CORPORATION, a
3 California Corporation; YAN KALIKA, an individual; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff for failure
7 to pay all overtime, meal period premiums, and paid sick time owed, failure to reimburse expenses,
8 wage statement violations, and failure to pay final wages. Plaintiff has also alleged individual causes of
9 action for failure to pay overtime, failure to pay all meal period premiums, failure to provide accurate
10 wage statements, failure to pay final wages, failure to reimburse expenses, and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, Business & Professions Code and Wage Order No. 4.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5 in that some of
16 the wrongful acts and violations of law asserted herein occurred within Sacramento County, and
17 Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers*
18 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984). Furthermore, Defendants employed Aggrieved
19 Employees within Sacramento County. *See Crestwood Behavioral Health, Inc. v. Sup. Ct.*, 60
20 Cal.App.5th 1069, 1072, 1076-1077 (2021) (holding venue for former employee's action against
21 employer under the Private Attorneys General Act of 2004 was proper in any county where other
22 aggrieved employees worked).

23 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
24 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
25 of herself and other Aggrieved Employees. Pursuant to California Labor Code section 2699.3, Plaintiff
26 gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA")
27 on approximately May 12, 2021. Plaintiff provided facts and legal bases for her claims within the notice
28 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.

1 Plaintiff also submitted the \$75.00 filing fee. The May 12, 2021, notice was also sent via certified mail
2 to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice
3 correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private
4 Attorneys General Act ("PAGA") and may bring this action on behalf of herself and all similarly
5 situated employees, *i.e.*, Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
6 *Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
7 include but is not limited to the following: all non-exempt employees who have worked, or continue to
8 work, for Defendants in California from one year prior to Plaintiff's notice to the LWDA.

9 **PARTIES**

10 5. ANDREA WALKER is an individual over the age of eighteen (18) and is a resident
11 of the State of California.

12 6. On information and belief, Plaintiff alleges, YAN KALIKA DENTAL
13 CORPORATION is now and/or at all times mentioned in this Complaint was a California
14 Corporation and the owner and operator of an industry, business and/or facility doing business in the
15 State of California.

16 7. On information and belief, Plaintiff alleges that YAN KALIKA is an individual over
17 the age of eighteen (18) and is a resident of the State of California. Plaintiff further allege(s) that
18 YAN KALIKA is an owner, director, officer, and/or managing agent of YAN KALIKA DENTAL
19 CORPORATION responsible for causing the violations outlined in this Complaint. As such YAN
20 KALIKA is individually liable pursuant to California Labor Code section 558.1

21 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
22 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
23 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
24 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
25 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
26 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
27 Plaintiff.

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1 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
2 other Defendants and was acting within the course and scope of such agency or employment. The
3 Defendants are jointly and severally liable to Plaintiff.

4 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
5 were members of and/or engaged in a joint employment, joint venture, partnership and common
6 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
7 joint venture, partnership and common enterprise.

8 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
9 wrongs, complaints, injuries and/or damages alleged in this Complaint.

10 **GENERAL ALLEGATIONS**

11 12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 11 as though fully
12 set forth herein.

13 13. Plaintiff worked for Defendants from approximately June 30, 2018 to December 1, 2020.
14 Plaintiff worked as a dental assistant traveling between multiple office locations.

15 14. Defendants paid Plaintiff and Aggrieved Employees an hourly rate in addition to non-
16 discretionary remuneration, such as bonuses, etc. However, Defendants failed to incorporate the value
17 of these bonuses into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of
18 paying overtime wages, meal period premiums and paid sick time. For example, during Defendants'
19 8/1/20 to 8/15/20 pay period, Defendants' paystub reflects that Defendants paid Plaintiff several bonuses
20 totaling \$50.00 and that she worked .49 overtime hours. Defendants paid Plaintiff's overtime wages at
21 exactly 1.5x her base hourly rate, which does not include any adjustment for the value of the bonuses.
22 Similar miscalculations occurred regarding overtime, sick leave pay, and meal period premiums in the
23 9/1/20 to 9/15/20 pay period. This practice of Defendants not to incorporate the value of bonuses into
24 employees' regular rates of pay resulted in unpaid overtime, unpaid meal period premiums, and unpaid
25 sick leave for Plaintiff and Aggrieved Employees.

26 15. Plaintiff and Aggrieved Employees were also not authorized and permitted to take all
27 meal periods they were entitled to, as evidenced by their being paid meal period premiums.

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16. Defendants required Plaintiff and Aggrieved Employees to incur expenses for work without paying reimbursement for such expenses. For instance, Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones to reply to work-emails, answer work related calls, use the Google Drive app to check their schedule among other tasks, and use navigation to get to various job sites. Defendants did not reimburse Plaintiff or Aggrieved Employees for the use of their personal cellphones.

17. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants provided did not accurately itemize employees' gross and net wages, meal period premiums, and all applicable hourly rates in effect during the pay period, total hours worked, and the corresponding number of hours worked at each hourly rate.

18. At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff and Aggrieved Employees had overtime, sick time, and meal period premiums owing to them. To date, Defendants have not paid Plaintiff and Aggrieved Employees these wages they are owed.

FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

19. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 18 as though fully set forth herein.

20. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other Aggrieved Employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

1 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

2 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

3 21. Plaintiff seeks civil penalties against Defendants as provided in the California Labor
4 Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section
5 2699(f)(2).

6 22. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code
7 sections 2699(a) and 2699.3.

8 23. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have
9 been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the
10 extent pertinent as if set forth here in full.

11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PAY OVERTIME WAGES**
13 **(As to all Defendants)**

14 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
15 set forth herein.

16 25. During the period Plaintiff employed by Defendants, Defendants were required to
17 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
18 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
19 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A);*
20 *Cal. Lab. Code §§ 510, 1194.*

21 26. Plaintiff worked in excess of eight (8) hours per day and/or forty (40) hours per week on
22 several occasions while employed by Defendants. Plaintiff also was paid nondiscretionary
23 remuneration, such as bonuses. However, Defendants failed to compensate Plaintiff for all overtime
24 hours worked at her regular rate of pay due to Defendants' failure to include the value of
25 nondiscretionary remuneration, such as bonuses, into her regular rate.

26 27. Plaintiff was not exempt from overtime protections employees under the California Wage
27 Orders and Labor Code.

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28. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully set forth herein.

30. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

31. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

32. California Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

33. Defendants employed Plaintiff for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff to take her first meal period before the completion of her fifth hour of work and failed to allow Plaintiff to take her second meal period before the completion of her tenth hour of work. Plaintiff did not waive their rights to all meal periods throughout their employment.

34. Defendants further failed to pay Plaintiff the full value of applicable meal period premiums for any such missed meal breaks. Defendants failed to pay Plaintiff meal period premiums at the correct rate of pay as Defendants failed to include the value of nondiscretionary remuneration, such as bonuses, when paying Plaintiff's regular rate of pay.

35. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully set forth herein.

37. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

38. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all overtime time hours worked, meal premiums, and paid sick time and corresponding rates of pay, and gross and net wages earned. Plaintiff suffered confusion over whether she received all wages owed and was prevented from effectively challenging information on her wage statements.

39. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully set forth herein.

41. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

42. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

43. Plaintiff did not receive all wages, including overtime wages, meal period premiums, or all sick leave pay owed at her termination or within the required time after her separation from employment.

44. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

45. Defendants knew of their obligation to pay Plaintiff her final wages. Defendants had knowledge that bonuses paid to Plaintiff were nondiscretionary and that such bonuses should have been included in the regular rate of pay calculation. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

46. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. California Labor Code section 2802(a) states that "An 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

49. As described above, Defendants required Plaintiff to use her personal cellphone for work but failed to reimburse her for such use.

50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to YAN KALIKA DENTAL CORPORATION and DOES 1 to 100)

51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

52. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

53. Plaintiff was not paid all wages owed, overtime wages, meal period premiums, paid sick leave, or reimbursement for business expenses, during her employment or any time thereafter.

54. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

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55. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 246, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

2. As to the Second Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Interest for the wages due pursuant to California Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

3. As to the Third Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

4. As to the Fourth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

5. As to the Sixth Cause of Action:

- a. An amount to be proven at trial;
 - b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
6. For such other and further relief as this Court may deem just and proper, including, but not limited to:
- a. Wages as proved at trial;
 - b. Injunctive and Declaratory relief;
 - c. Attorney's fees and costs as provided for by law; and
 - d. Interest.

Dated: September 1, 2023

Shimoda & Rodriguez Law, PC

By: Brittany Berzin
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 *Walker v. Yan Kalika Dental Corporation*
2 *Sacramento County Superior Court of California, Case No. 34-2021-00305106*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On September 18, 2023, I served the following documents on the party below:

9 **• FIRST AMENDED COMPLAINT FOR DAMAGES AND CIVIL**
10 **PENALTIES**

11 Lukas Jon Clary (SBN:251519) 12 Weintraub Tobin Chediak Coleman & Grodin 13 400 Capitol Mall, Floor 11 14 Sacramento, CA 95814-4434 15 Phone: (916) 558-6000 16 Fax: (916) 446-1611 17 Email: lclary@weintraub.com ; 18 rcarrillo@weintraub.com ; 19 bjenness@weintraub.com ; 20 ccervantes@weintraub.com	
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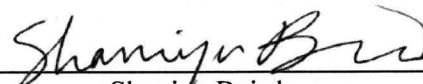
21 [] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set forth
25 above, I served the aforementioned document(s) on the parties in said action
26 by placing a true copy thereof enclosed in a sealed envelope with postage
27 thereon fully prepaid, for collection and mailing on this date, following
28 ordinary business practices, at Elk Grove, California, addressed as set forth
above.

[] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that this declaration was executed on September 18, 2023, at Salt Lake City, Utah.

29 
30 Shaniya Baird