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Assigned for all Purposes

Judge Randall J. Sherman

CX-105

Attorneys for Plaintiff GLADYS ZAPATA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

GLADYS ZAPATA,

Plaintiff,

vs.

MAXUM PHYSICAL THERAPY, INC.
and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: 30-2021-01233206-CU-OE-CXC

) **COMPLAINT FOR DAMAGES FOR:**

) **1) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

COMES NOW Plaintiff, GLADYS ZAPATA (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Orange in this judicial district because Defendants MAXUM PHYSICAL THERAPY, INC. and DOES 1 to 25, inclusive, (hereinafter collectively known as "Defendants"), do business in the County of Orange, and because Defendants' obligations and

1 liabilities arise therein, and because the work that was performed by Plaintiff in the County of
2 Orange is the subject of this action. Moreover, Plaintiff's damages sought herein exceed
3 \$25,000.

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

5 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
6 MAXUM PHYSICAL THERAPY, INC. (hereinafter "MAXUM") is a California corporation,
7 doing business in the County of Orange, State of California.

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

15 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
16 that information and belief, alleges that at all times herein mentioned, each of the remaining
17 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
18 under the authority of their agency, employment, or representative capacity, with the consent
19 of his/her codefendants.

20 **GENERAL ALLEGATIONS**

21 6. Plaintiff started working for MAXUM on or around February 2020. Her latest job title
22 was that of "Rehab Administrative Assistant". Plaintiff was classified as an hourly, non-
23 exempt employee and her latest rate of pay was \$14.00 per hour. Plaintiff was paid on a semi-
24 monthly basis. Plaintiff's employment with MAXUM ended on or around May 6, 2021.

1 7. MAXUM has committed numerous labor code violations against Plaintiff and other
2 hourly, non-exempt employees, including the therapists.

3 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
4 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
5 Security Services USA, Inc., an onsite security provider. After about a year of employment,
6 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
7 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
8 termination of employment and weekly payment of wages to temporary employees. The trial
9 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
10 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
11 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
12 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
13 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
14 PAGA representative to sue for violations that the representative has personally suffered. The
15 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
16 and others. The statute also states that an “aggrieved employee” is “any person who was
17 employed by the alleged violator and against whom one or more of the alleged violations was
18 committed.” Because at least one of the violations that Huff had alleged had affected him
19 personally, the Court of Appeal denied Securitas’ motion.
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22 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
23 other employees, it allows for suits broader than the specific violations the named employee
24 experienced. Therefore, even if the employee did not personally experience the Labor Code
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1 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's
2 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
3 other hourly employees, including hourly non-exempt employees, such as the therapists.

4 10. MAXUM did not provide Plaintiff and other aggrieved employees with compensation
5 for all hours worked and did not pay Plaintiff and others the minimum wages to which they
6 were entitled for work performed "off the clock" pursuant to California Labor Code sections
7 1194, 1197 and 1197.1. This is so because MAXUM had a policy of rounding down the hours
8 worked by Plaintiff and other aggrieved employees which translated to Plaintiff and others not
9 being paid for all hours worked, including minimum wages. Moreover, employees such as the
10 therapists would consistently work through their meal and rest breaks and either before
11 clocking in or after clocking out for their work shifts because the therapists did not have
12 enough time during the day to complete their progress reports. As such, they would work "off
13 the clock" and management was unequivocally aware of the latter.

14 11. Due to the above "off the clock" work and rounding issues, MAXUM also violated
15 Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved
16 employees overtime, even though they worked more than 8 hours per day and/or 40 hours per
17 week throughout their employment. Plaintiff and other similarly situated aggrieved employees
18 worked more than 8 hours per day and/or 40 hours per week, however, they were not
19 compensated for their overtime hours due to working "off the clock" and due to the rounding
20 policy as described above. Moreover, MAXUM failed to include bonuses in calculating the
21 correct regular rate of pay, which translated to the overtime rate of pay being inaccurate.

22 12. MAXUM violated Labor Code §§ 512 and 226.7 as well as the applicable Industrial
23 Welfare Commission (IWC) Wage Order (no. 4) because it failed to provide Plaintiff and other
24 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
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every five (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal periods. MAXUM did not completely relieve Plaintiffs of all duties during said meal periods. MAXUM did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods was not provided. Due to the understaffing and fast-paced work environment, Plaintiff and others would not always receive timely, uninterrupted meal breaks wherein they were relieved of all work duties. Furthermore, since the breaks were technically supposed to be scheduled by MAXUM management, there were occasions wherein management would schedule employee meal breaks to occur while they were working on a patient. As such, it would be impossible for the employee to receive their statutory meal break at the scheduled time and would have to take the meal break at a later time, after the 5th hour worked. The environment and culture at MAXUM did not lend itself to Plaintiff and others receiving consistent statutory meal breaks.

13. MAXUM violated Labor Code § 226.7 as well as the applicable IWC Wage Order (no. 4) because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. MAXUM did not completely relieve Plaintiff of all duty during said rest periods. MAXUM did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not company policy and not part of the company culture for employees such as Plaintiff and others to take rest breaks, especially since management would consistently schedule rest breaks when the employees were engaged with and dealing with patients. Moreover, the fast-paced nature of the work in going from patient to patient was not conducive to employees receiving timely, uninterrupted rest breaks. As such, the culture at MAXUM did not lend itself to the employees receiving statutory breaks wherein they were relieved of all work duties. It

1 was the normal practice and custom of MAXUM not to authorize, permit, and enforce statutory
2 rest periods.

3 14. Additionally, and as alluded to above, therapists would not receive uninterrupted meal
4 and rest breaks since they would be forced to work on their progress reports during these time
5 frames due to a lack of time in getting them completed. As such, aggrieved employees at
6 MAXUM did not consistently receive timely, statutory meal and rest breaks wherein they were
7 relieved of all work duties.

8 15. Furthermore, during the relevant time period, and based on the above violations,
9 MAXUM failed to pay Plaintiff and other similarly situated aggrieved employees all wages
10 due to them within any time period specified by California Labor Code section 204. MAXUM
11 was also in violation of California Labor Code section 226(a) by failing to include pertinent
12 information on the wage statements, including but not limited to, all applicable hourly rates,
13 the correct name and address of the employing legal entity, the employee's identifying
14 information, the correct start and end of the pay period, all hours worked, overtime hours
15 worked, correct overtime pay, gross wages earned, premium pay for missed meal and rest
16 breaks, all deductions, net wages earned, and reimbursement for business expenses, among
17 others. As such, MAXUM did not provide Plaintiff and other similarly situated aggrieved
18 employees with complete, accurate itemized wage statements.

19 16. MAXUM violated Labor Code § 203 because it willfully failed to pay Plaintiff and
20 other aggrieved employees earned and due wages upon separation of employment, either
21 immediately upon involuntary termination, or within 72 hours of resignation. These earned but
22 unpaid wages include the unpaid minimum wages/compensation for all hours worked,
23 overtime, premium pay for missed meal and rest breaks, and business expense reimbursement,
24 among others.

1 17. During the relevant time period, MAXUM also failed to keep accurate and complete
2 payroll records showing the correct wages paid and all hours worked to Plaintiff and other
3 aggrieved employees, pursuant to California Labor Code sections 1174(d).

4 18. Alternatively, during the relevant time period, Plaintiff and other aggrieved employees
5 incurred necessary, business-related expenses and costs that were not reimbursed by MAXUM.
6 These costs include, but are not limited to, the use of their personal cell phones for work
7 purposes. In fact, Plaintiff would have to use her cell phone in dealing with patients because
8 her cell phone had a timer function that was utilized by Plaintiff and other employees.
9 Moreover, Plaintiff would utilize an application on her cell phone to help the patients with
10 brushing their teeth. Management was unequivocally aware of the fact that Plaintiff and others
11 utilized their personal cell phones for work purposes. Accordingly, MAXUM was in violation
12 of California Labor Code sections 2800 and 2802 for failing to reimburse Plaintiff and others
13 for their incurred business expenses. Moreover, MAXUM failed to provide sick pay pursuant
14 to Labor Code section 246 and also failed to provide Worker's Compensation coverage for
15 Plaintiff and other aggrieved employees in violation of Labor Code Section 3700.5.
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18 **FIRST CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **Individual and Representative Claim for PAGA penalties under California Labor Code**
21 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558,**
22 **1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5 and the applicable Industrial Welfare**
23 **Commission Wage Order Nos. 4-2001**

24 **(Plaintiff Against All Named Defendants and all DOE Defendants)**

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

27 20. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
28 Defendants of the specific violations of the California Labor Code that Defendants
and DOE defendants have violated and continue to violate.

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

3 22. Plaintiff therefore has exhausted all administrative remedies required of her under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

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

13 24. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
14 violator and had one or more of the alleged violations committed against her, and therefore is
15 properly suited to represent the interests of other current and former hourly, non-exempt
16 employees who worked for MAXUM in the State of California at any and all locations during
17 the PAGA period.

18 25. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
19 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
20 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

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

25 27. California Labor Code section 2699 et seq. imposes penalties upon culpable
26 Defendants for violating the Labor Code.
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1 28. California Labor Code section 558 establishes a civil penalty as follows: Any
2 employer or other person action on behalf of an employer who violates, or causes to be
3 violated, a section of this chapter or any provision regulating hours and days of work in any
4 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
5 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
6 dollars (\$50) for each underpaid employee for each pay period for which the employee was
7 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
8 employee for each pay period for which the employee was underpaid ...;

9 29. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
10 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
11 seeking individual/victim specific relief or underpaid wages under this particular cause of
12 action.

13 30. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
14 the following:

15 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
16 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, and
17 3700.5 via 2698 and 2699 any other Labor Codes and Wage Orders (including
18 no. 4) violated on the facts alleged in this Complaint.

19 31. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s fees,
20 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
21 employees as alleged herein in an amount to be shown according to proof at trial and within the
22 jurisdictional limits of this Court.

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

- 25 1. For the imposition of civil penalties;
- 26 2. For maximum civil penalties available under Labor Code Section 2699
27 against Defendants in a manner and amount authorized by that statute, as described
28 more particularly in the Complaint and representative PAGA claims;

3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698 et seq., and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: November 23, 2021

MESSRELIAN LAW INC.

By 
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