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and the Aggrieved Employees

FILED
KERN COUNTY SUPERIOR COURT
10/30/2023

BY Evans, Gricelda
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

ILA FORD, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

CALIFORNIA HEALTH AND
RECOVERY SOLUTIONS, P.C., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: BCV-21-101663

**FIRST AMENDED CLASS ACTION AND
PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF LABOR CODE
§ 226(a); and**

**(2) VIOLATION OF LABOR CODE §
2698, *ET SEQ.*, THE PRIVATE
ATTORNEYS GENERAL ACT**

DEMAND OVER \$25,000.00

1 Plaintiff Ila Ford ("Plaintiff") hereby submits this Class Action and Private Attorneys
2 General Act, Labor Code § 2698, et seq. ("PAGA") Representative Action Complaint
3 ("Complaint") against Defendant California Health and Recovery Solutions, P.C. ("Defendant")
4 and Does 1 through 50 (collectively, "Defendants"), on behalf of herself and all other similarly
5 situated current and former employees of Defendants, for penalties and/or damages for failure to
6 provide complete and accurate itemized wage statements in violation of the California Labor
7 Code, and on behalf of herself and all other aggrieved employees of Defendants for penalties
8 pursuant to PAGA, for Defendants' violations of the California Labor Code, as follows:

9 INTRODUCTION

10 1. This Complaint is within the Court's jurisdiction under California Labor Code
11 §§ 226 and 2698, *et seq.*

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against individuals who worked for Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
15 jointly and severally, have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by failing to provide complete and accurate itemized
17 wage statements to Plaintiff and Class Members.

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

22 JURISDICTION AND VENUE

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

25 6. Venue is proper because Defendants do business in Kern County, and Plaintiff
26 worked for Defendants in Kern County, specifically in Bakersfield, California.

27 PARTIES

28 7. Plaintiff is currently employed by Defendant as a Licensed Vocational Nurse

1 (LVN). Plaintiff began her employment with Defendant in about July 2019, and works as an
2 hourly, non-exempt employee.

3 8. Plaintiff was and is the victim of the policies, practices, and customs of
4 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
5 by California Labor Code §§ 226 and 2698.

6 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
7 California Health and Recovery Solutions, P.C. was and is a California corporation that provides
8 healthcare services. Plaintiff is informed and believes, and based thereon alleges, that Defendant
9 operates and maintains business locations and facilities in Bakersfield, California.

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

15 11. Plaintiff does not know the true names or capacities, whether individual, partner
16 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
17 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
18 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
19 based thereon alleges that each of said fictitious defendants were responsible in some way for the
20 matters alleged herein and proximately caused Plaintiff and members of the general public and
21 class to be subject to the illegal employment practices, wrongs, and injuries complained of
22 herein.

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

28 13. Plaintiff is informed and believes, and based thereon alleges, that at all times

1 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
2 joint venturer of, or working in concert with each of the other co-Defendants and was acting
3 within the course and scope of such agency, employment, joint venture, or concerted activity.
4 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
5 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
6 Defendants.

7 14. At all times herein mentioned, Defendants, and each of them, were members of,
8 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
9 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

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

17 CLASS ACTION ALLEGATIONS

18 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
19 California Code of Civil Procedure § 382. Plaintiff proposes the following Class: All current
20 and former non-exempt employees of Defendants in the State of California who were paid shift
21 differential wages, including without limitation, "Shift Diff2," "Shift Diff3," and "Wkend
22 Worked" wages, at any time from July 21, 2020, through the present (the "Class").

23 17. Plaintiff further reserves the right to amend such Class definition based upon
24 further discovery.

25 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
26 that joinder of all members would be impractical, if not impossible. The identities of the
27 members of the Class are readily ascertainable by review of Defendants' records, including
28 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed to provide accurate itemized wage statements to its employees that identified the
2 applicable rates of pay and corresponding number of hours worked for shift differential wages,
3 whenever such wages were paid, in violation of Labor Code § 226(a).

4 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
5 necessary steps to represent fairly and adequately the interests of the Class defined above.
6 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
7 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
8 actions in the past and currently have a number of wage-and-hour class actions pending in
9 California state and federal courts.

10 20. Defendants uniformly administered a corporate policy and practice of failing to
11 provide accurate itemized wage statements to Plaintiff and the Class that identified the applicable
12 rates of pay and corresponding number of hours worked for shift differential wages, whenever
13 such wages were paid, in violation of Labor Code § 226(a).

14 21. Plaintiff is informed and believes, and based thereon alleges, that this corporate
15 conduct is accomplished with the advance knowledge and designed intent to willfully and
16 intentionally fail to accurately record proper rates of pay and hours worked.

17 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
18 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
19 Labor Code § 226(a).

20 23. **Common Question of Law and Fact:** There are predominant common questions
21 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
22 concerning Defendants' policy and practice of failing to provide accurate itemized wage
23 statements to Plaintiff and the Class that identified the applicable rates of pay and corresponding
24 number of hours worked for shift differential wages, in violation of Labor Code § 226(a).

25 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
26 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
27 as the Class Members. As with Defendants' other California non-exempt employees, Plaintiff
28 was paid hourly and worked shifts where she received shift differential wages, such as "Shift

1 Diff2,” “Shift Diff3,” and “Wkend Worked” wages. However, whenever Defendants paid such
2 shift differential wages to Plaintiff, Defendants failed to identify the applicable rate of pay and
3 corresponding number of hours worked for said wages on wage statements, in violation of Labor
4 Code § 226(a)(9). Instead, the shift differential wages were listed as a particular lump sum
5 without a breakdown of the applicable rate and hours that were used to calculate the shift
6 differential wages. Therefore, Plaintiff is a member of the Class and has suffered the alleged
7 violations of California Labor Code § 226(a).

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

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

24 27. The prosecution of separate actions by the individual Class Members, even if
25 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
26 to individual Class Members against the Defendants and which would establish potentially
27 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
28 individual Class Members which would, as a practical matter, be dispositive of the interest of the

1 other Class Members not parties to the adjudications or which would substantially impair or
2 impede the ability of the Class Members to protect their interests. Further, the claims of the
3 individual Class Members are not sufficiently large to warrant vigorous individual prosecution
4 considering all of the concomitant costs and expenses.

5 28. Such a pattern, practice and uniform administration of corporate policy regarding
6 illegal employee compensation described herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
8 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
9 § 226 and Code of Civil Procedure § 1021.5.

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

13 **FIRST CAUSE OF ACTION**

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

15 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

16 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 31. Labor Code § 226(a) requires employers to provide itemized wage statements to
19 its employees that identify accurate information, including without limitation, all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours worked at
21 each hourly rate by the employee. Defendants failed in their affirmative obligation to provide
22 accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code § 226(a).

23 32. Plaintiff and the Class were paid hourly as non-exempt employees. As such, the
24 wage statements should have reflected the accurate hourly rates of pay, including for shift
25 differential wages, such as "Shift Diff2," "Shift Diff3," and "Wkend Worked" wages, whenever
26 such wages were paid. However, whenever shift differential wages were paid to Plaintiff and the
27 Class, Defendants failed to identify the applicable rates of pay and corresponding number of
28 hours worked used to calculate such shift differential wages on wage statements issued to

1 Plaintiff and the Class. Instead, Defendants had a policy and practice of only identifying the
2 amount of shift differential wages earned as a lump sum, without any breakdown as to the hourly
3 rates and applicable number of hours worked. This policy and practice is a direct violation of
4 Labor Code § 226(a)(9).

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

10 **SECOND CAUSE OF ACTION**

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

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

13 34. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
14 though fully set forth herein.

15 35. Plaintiff brings this cause of action as a proxy for the State of California and in
16 this capacity, seeks penalties on behalf of all current and former non-exempt employees who
17 worked for Defendants in the State of California and were paid shift differential wages, including
18 without limitation, "Shift Diff2," "Shift Diff3," and "Wkend Worked" wages, at any time from
19 June 7, 2020, through the present ("Aggrieved Employees"), for Defendants' violations of Labor
20 Code § 226(a).

21 36. Defendants have failed in their affirmative obligation to provide accurate itemized
22 wage statements in violation of Labor Code § 226(a). Labor Code § 226(a) requires employers to
23 provide itemized wage statements to its employees that identify accurate information, including
24 without limitation, all applicable hourly rates of pay and hours worked.

25 37. Here, Plaintiff and Aggrieved Employees were not provided accurate itemized
26 wage statements that listed the requirements under Labor Code § 226(a) whenever shift
27 differential wages, such as "Shift Diff2," "Shift Diff3," and "Wkend Worked" wages were paid.
28 In particular, whenever shift differential wages were paid to Plaintiff and Aggrieved Employees,

1 Defendants failed to identify the applicable rates of pay and corresponding number of hours
2 worked used to calculate said shift differential wages on wage statements issued to Plaintiff and
3 Aggrieved Employees. Instead, Defendants have a policy and practice of only identifying the
4 amount of shift differential wages paid as a lump sum, without any breakdown as to the hourly
5 rates and applicable number of hours worked, in violation of Labor Code § 226(a)(9).

6 38. On or about June 7, 2021, Plaintiff sent written notice to the California Labor &
7 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code § 226(a),
8 pursuant to the PAGA. Plaintiff also provided notice of said Labor Code violations to Defendant
9 via certified mail pursuant to the PAGA.

10 39. As of the date of the filing of this Complaint, the LWDA has not responded to
11 Plaintiff's written notice nor indicated that it intends to investigate the Labor Code violations
12 provided for in the written notice.

13 40. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
14 applicable civil penalties for Defendants' violations of Labor Code § 226(a), for the time period
15 described above, on behalf of herself and other Aggrieved Employees.

16 **PRAYER FOR RELIEF**

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

- 19 1. For an order certifying the proposed Class;
- 20 2. For an order appointing Plaintiff as the representative of the Class;
- 21 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 22 4. Upon the First Cause of Action, for penalties and/or damages pursuant to
23 California Labor Code § 226, and for costs and attorneys' fees;
- 24 5. Upon the Second Cause of Action, for the full amount of penalties pursuant to
25 California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;
- 26 6. On all causes of action for attorneys' fees and costs as provided by California
27 Labor Code §§ 226, and 2699, and Code of Civil Procedure § 1021.5; and
- 28 7. For such other and further relief that the Court may deem just and proper.

1
2 DATED: October 26, 2023

DIVERSITY LAW GROUP, P.C.

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4 By: /s/ Mai Tulyathan
5 Larry W. Lee
6 Mai Tulyathan
7 Attorneys for Plaintiff, the Class, and the
8 Aggrieved Employee
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