

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Holly Fujie

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Attorneys for Plaintiff,
RUSHELLE GONDER, an individual and on behalf of others similarly-situated

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

RUSHELLE GONDER, an individual and on
behalf of others similarly-situated

Plaintiff,

v.

UNITED HEALTHCARE SERVICES, INC., a
corporation; and DOES 1 to 20, inclusive,

Defendants.

CASE NO.: **21STCV46364**

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION
OF PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§ 2698 ET SEQ.**

[DEMAND FOR TRIAL BY JURY]

TO THIS HONORABLE COURT:

1. COMES NOW, Plaintiff RUSHELLE GONDER (“Plaintiff” or “GONDER”), on behalf of herself and others similarly situated, and brings this action against Defendants UNITED HEALTHCARE SERVICES, INC. (“UNITED HEALTHCARE” or UHS), and DOES 1 to 20, inclusive (referred to collectively as “Defendants”), and alleges on information and belief (except those allegations relating to Plaintiff GONDER herself, which is asserted on personal knowledge), as follows:

PARTIES TO THE ACTION

Plaintiff Rushelle Gonder

2. Plaintiff GONDER is a resident of the County of Los Angeles, State of California. Plaintiff GONDER was formerly employed by Defendants UHS and/or DOES 1-20 as a Customer Service Representative in the County of Los Angeles, and the State of California.

Defendant UNITED HEALTHCARE

3. Defendant UHS and DOES 1 to 20 is a corporation organized under the laws of the State of Minnesota. Plaintiff GONDER is informed and believes, and thereon alleges, that Defendant UHS at all relevant times, owned and/or leased property, and operated facilities (including, but not limited to its California headquarters located at 5701 Katella Ave, Cypress, California 90630), and/or employed and/or jointly employed individuals, including Plaintiff GONDER, in the County of Los Angeles, and the State of California.

DOE Defendants

4. The true names and capacities of Defendants DOES 1 to 20 are unknown to Plaintiff GONDER who will amend this complaint to allege such names and capacities as soon as they are ascertained. Each Defendant designated herein as DOE is in some manner legally responsible for the unlawful acts and damages alleged herein.

Joint Employment Relationship

5. Plaintiff GONDER is informed and believes, and based thereon alleges, that Defendant UHS and DOES 1 to 20, and each of them, were partners, joint venturers, parents, subsidiaries, and/or agents of the other Defendants and were in a joint employment relationship with Plaintiff GONDER for all relevant purposes described in this Complaint.

GENERAL FACTUAL ALLEGATIONS

6. Plaintiff GONDER was formerly employed by Defendant UHS and DOES 1 to 20 as a Customer Service Representative in the County of Los Angeles, and the State of California.

7. Plaintiff GONDER was a non-exempt employee throughout her UHS employment. Defendant UHS and DOES 1 to 20 paid Plaintiff GONDER on an hourly basis and she also earned non-discretionary compensation including, but not limited to, a "Quarterly Incentive"

1 bonus. Plaintiff GONDER is informed and believes, and thereon alleges, that Defendant UHS
2 and DOES 1 to 20 compensated numerous other California-based non-exempt employees with an
3 hourly wage plus non-discretionary compensation including, but not limited to, a “Quarterly
4 Incentive” bonus, and did so throughout Plaintiff GONDER’s employment and continuing
5 through the present.

6 8. At all relevant times, Defendant UHS and DOES 1 to 20’s employment of Plaintiff
7 GONDER and similarly-situated employees was, and is, governed by the, California Wage
8 Order, Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001 (“Wage Order 4”),
9 including but not limited to Sections 3, 4, 11, and 12; the Cal. Code of Regulations (CCR) §
10 11040, and the California Labor Code including, but not limited to, the Private Attorney General
11 Act (“PAGA”) Labor Code § 2698 et seq.

12 9. At all relevant times, California law required Defendant UHS and DOES 1 to 20 to
13 provide Plaintiff GONDER and all its other non-exempt employees with an unpaid meal period
14 of at least 30 minutes, prior to working more than 5 hours and a second unpaid meal period of at
15 least 30 minutes, prior to working more than 10 hours.

16 10. During Defendant UHS and DOES 1 to 20’s employment of Plaintiff GONDER,
17 Defendant UHS and DOES 1 to 20 failed to provide Plaintiff GONDER with all unpaid meal
18 periods to which she was entitled to receive under California law including, but not limited to:
19 the first unpaid meal period of at least 30 minutes, prior to working more than 5 hours, and the
20 second unpaid meal period of at least 30 minutes, prior to working more than 10 hours. Plaintiff
21 GONDER is informed and believes, and thereon alleges, that Defendant UHS and DOES 1 to 20
22 also failed to provide legally compliant meal periods to its other California-based non-exempt
23 employees who were compensated with an hourly wage plus non-discretionary bonus.

24 11. During Defendant UHS and DOES 1 to 20’s employment of Plaintiff GONDER through
25 the present, Defendant UHS and DOES 1 to 20’s policy and practice was to pay Plaintiff
26 GONDER and all nonexempt employees 1 hour of base hourly pay (i.e., “straight time” pay) for
27 each workday an employee was not provided a compliant meal period. These payments, which
28 are reflected on the itemized wage statements UHS provided to Plaintiff GONDER, and other

1 nonexempt employees, as “MissedMeal” and do not account for earned non-discretionary income
2 including, but not limited to, a “Quarterly Incentive” bonus. Accordingly, UHS’s payment for
3 non-compliant meal periods was, and continues to be, paid in an amount less than the “regular
4 rate” of pay for employees, like Plaintiff GONDER, who earned hourly pay plus other
5 nondiscretionary compensation including, but not limited to “Quarterly Incentive” bonus in
6 violation of California law. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 863 (July 15,
7 2021) (“The calculation of premium pay for a noncompliant meal, rest, or recovery period, like
8 the calculation of overtime pay, must account for not only hourly wages but also other
9 nondiscretionary payments for work performed by the employee.”); see also *Marin v. Costco*
10 *Wholesale Corp.*, 169 Cal.App.4th 804, 807 (2008) (holding that non-discretionary bonus must
11 be included in overtime rate calculation under California law.)

12 **FIRST CAUSE OF ACTION**

13 **Violation of PAGA (Labor Code § 2698 et seq.)**

14 ***(Against All Defendants)***

15 12. Plaintiff GONDER hereby incorporates by reference and realleges all preceding
16 paragraphs of this complaint as if fully set forth herein.

17 13. California Labor Code section 2698 *et. seq.* provides an “aggrieved employee” a private
18 right of action, on behalf of herself and other current and former employees, to remedy an
19 employer’s failure to comply with one more Labor Code sections designated in Labor Code
20 section 2699.5 including, but not limited to, §§ 201, 201(a), 202(a), 203, 204, 226(a), 226.7(a)-
21 (e), 512(a), and 1033—all which Defendant UHS and DOES 1 to 20 violated as set forth above
22 in this pleading and within the Plaintiff GONDER’s notice(s) to the LWDA/ Defendant UHS and
23 DOES 1 to 20 (the “PAGA Notice”), which is attached hereto as Exhibit 1 and incorporated by
24 reference.

25 14. Plaintiff GONDER is an “aggrieved employee” as defined by PAGA because she was
26 formerly employed by Defendant UHS and DOES 1 to 20 and one or more of the alleged Labor
27 Code violations were committed against her. Labor Code § 2699(c) (“aggrieved employee”
28

means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”)

15. Pursuant to PAGA, Plaintiff GONDER, individually and on behalf of all aggrieved employees and the State of California, requests statutory penalties from Defendant UHS and DOES 1 to 20 for the violations---allocated seventy-five percent (75%) to the Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) to the affected employees---including, but not limited to:

- (a) Penalties under Labor Code section 2699(f)(2) in the amount of one hundred dollars (\$100.00) for each aggrieved employee, per pay period, for the initial violation, and two hundred dollars (\$200.00) per subsequent violation for each aggrieved employee per pay period.
- (b) Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50.00) for each aggrieved employee, per pay period, for the initial violation, and two hundred dollars (\$100.00) per subsequent violation for each aggrieved employee per pay period.
- (c) Pursuant to California Labor Code § 226(e), the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000.
- (d) Pursuant to California Labor Code § 558(a), violations of California Labor Code §512(a) and the applicable IWC Wage Order shall be subject to a civil penalty as follows: (i) for any initial violation, \$50 for each underpaid employee for each pay period for which the employee was underpaid; and (ii) for each underpaid employee for each pay period for which the employee was underpaid.

16. Pursuant to California Labor Code §§ 2699(a) and (f), 2699.5, and 2699(g)(1), Plaintiff GONDER, individually and on behalf of all aggrieved employees and the State of California, requests an award for reasonable attorneys’ fees and costs for the prosecution of this PAGA lawsuit.

17. On or about September 30, 2021, and in compliance with California Labor Code §2699.3(1)(A) and §2699.3(B), Plaintiff GONDER, on behalf of herself, and all aggrieved employees, filed the PAGA Notice with the LWDA (including payment of the applicable filing fee) of the specific Labor Code provisions to have been violated, including the facts and theories to support the alleged violations; subsequently sending the PAGA Notice to Defendant UHS via certified mail via its registered agent for service of process that same day; and sending the PAGA Notice to Defendant UHS to its corporate office on or about October 1, 2021. The matter has been assigned LWDA Case Number LWDA-CM-846797-21.

18. Whereas the LWDA did not give notice to Plaintiff GONDER or her attorneys of its intent to investigate the alleged violation set forth in Plaintiff GONDER's PAGA Notice, and more than 65 calendar days have passed since the PAGA Notice was filed, Plaintiff GONDER now commences a civil action pursuant to Labor Code § 2699 pursuant to Labor Code § 2699.3(2)(A)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff GONDER prays for judgment against Defendants jointly and severally as follows:

1. For applicable statutory penalties.
2. For interest, costs of suit and attorney's fees.
3. Such other and further relief as this Court may deem proper and just including, but not limited to declaratory and/or injunctive relief.

DATE: December 20, 2021

LAW OFFICE OF DONALD POTTER



By: _____

Donald Potter
Attorneys for Plaintiff
RUSHELLE GONDER, an individual

DEMAND FOR JURY TRIAL

Plaintiff GONDER hereby demands a jury trial on all matters triable to a jury.

DATE: December 20, 2021

LAW OFFICE OF DONALD POTTER



By: _____

Donald Potter
Attorneys for Plaintiff
RUSHELLE GONDER, an individual

EXHIBIT 1



LAW OFFICE OF
DONALD POTTER

September 30, 2021

Email address: dp@donpotterlaw.com

SENT VIA CERTIFIED MAIL

UNITED HEALTHCARE SERVICES, INC.
c/o its Agent for Service of Process
CT Corporation System
330 N Brand Blvd Suite 700
Glendale, CA 91203

**Re: CALIFORNIA LABOR CODE § 2699.3 PAGA NOTICE
RUSHELLE GONDER/ UNITED HEALTHCARE SERVICES, INC.**

To Whom It May Concern:

My office represents Rushelle Gonder (“Gonder”), a former employee of United Healthcare Services, Inc. (“UHS”). Pursuant to California Labor Code § 2699.3, this letter serves as Gonder’s written notice to the California Labor and Workforce Development Agency (“LWDA”) and UHS.

Factual And Legal Allegations

A. Gonder Was Formerly Employed By UHS in California.

UHS is a Minnesota corporation that provides healthcare administrative services. At all relevant times, UHS conducted business, and employed persons, within the State of California including, but not limited to, at its headquarters located at 5701 Katella Ave, Cypress, California 90630.

Gonder was employed by UHS as a Customer Service Representative in the County of Los Angeles, and the State of California. She worked in this capacity from approximately October 2014 through on or about December 2, 2019.

At all relevant times, UHS’s employment of Gonder was governed by California Wage Order, Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001 (“Wage Order 4”), including but not limited to Sections 3, 4, 11, and 12; the Cal. Code of Regulations (CCR) § 11040, and the California Labor Code

B. Gonder Was A Non-Exempt UHS Employee Whose Compensation Plan Paid Her An Hourly Wage With A Non-Discretionary Bonus.

Gonder was a non-exempt employee throughout her UHS employment. UHS paid Gonder on an hourly basis and she also earned non-discretionary compensation including, but not limited to, a “Quarterly Incentive” bonus. Gonder is informed and believes, and thereon alleges, that UHS compensated numerous other California-based non-exempt employees with an hourly wage plus non-discretionary compensation including, but not limited to, a “Quarterly Incentive” bonus, and did so from the beginning of Gonder’s employment through the present.

C. UHS Didn’t Provide Gonder And Other Similarly-Situated Employees With All Of Their Legally Compliant Meal Periods.

At all relevant times during UHS’s employment of Gonder through the present, WAGE ORDER 4, including Section 11, CCR 8 § 11040, and Cal. Lab. Code §§ 512, 226.7 were in full force and binding on UHS. Accordingly, California law required UHS to provide Gonder and all its other non-exempt employees with an unpaid meal period of at least 30 minutes, prior to working more than 5 hours and a second unpaid meal period of at least 30 minutes, prior to working more than 10 hours.

During UHS’s employment of Gonder, UHS failed to provide Gonder with all unpaid meal periods to which she was entitled to receive under California law including, but not limited to: the first unpaid meal period of at least 30 minutes, prior to working more than 5 hours, and the second unpaid meal period of at least 30 minutes, prior to working more than 10 hours. Gonder is informed and believes, and thereon alleges, that UHS also failed to provide legally compliant meal periods to its other California-based non-exempt employees who were compensated with an hourly wage plus non-discretionary bonus.

D. UHS Did Not Pay Gonder And Similarly-Situated Employees 1 Hour Of “Regular Rate” Pay For Noncompliant Meal Periods.

During UHS’s employment of Gonder through the present, UHS’s policy and practice was to pay Gonder 1 hour of base hourly pay (i.e., “straight time” pay) for each workday she was not provided a compliant meal period. These payments, which are reflected on Gonder’s itemized wage statements (“MissedMeal”), do not account for Gonder’s earned non-discretionary income including, but not limited to, a “Quarterly Incentive” bonus, and, thus, each payment for non-compliant meal period was paid in an amount less than Gonder’s “regular rate” of pay.

Gonder is informed and believes, and thereon alleges, that UHS’s policy and practice of paying 1 hour pay at the base rate---and not the “regular rate”---for non-compliant meal periods also applied to all California-based non-exempt employees who also earned an hourly wage plus non-discretionary compensation, and it did so from the beginning of Gonder’s employment through the present.

E. UHS Violated The California Labor Code By Failing To Pay Gonder And Similarly-Situated Employees 1 Hour Of “Regular Rate” Pay For Noncompliant Meal Periods And Rest or Recovery Periods.

If an employer fails to provide an employee with a, “compliant meal, rest, or recovery period, [Cal. Labor Code section 226.7(c)] requires the employer to ‘pay the employee one additional hour of pay at the employee’s regular rate of compensation.’” *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 863 (July 15, 2021). “The calculation of premium pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime pay, must account for not only hourly wages but also other nondiscretionary payments for work performed by the employee.” *Id.*; see also *Marin v. Costco Wholesale Corp.*, 169 Cal.App.4th 804, 807 (2008) (holding that non-discretionary bonus must be included in overtime rate calculation under California law.)

Because UHS did not pay “regular rate” wages for noncompliant meal, rest or recovery periods, UHS violated the Cal. Labor Code § 226.7 and, in turn, did not provide Gonder and similarly-situated employees with all wages owed, compliant itemized wage statements, and all wages owed at termination. Accordingly, Gonder is an “aggrieved employee”¹ and her PAGA action asserts that UHS violated one or more of the following Labor Code provisions: Cal. Labor Code §§ 201, 201(a), 202(a), 203, 204, 226(a), 226.7(a)-(e), 512(a), and 1033.

We are requesting that the LWDA act in accordance with Labor Code §2699.3, et seq. and permit Rushelle Gonder to prosecute the above-mentioned PAGA claims. The LWDA may contact my office if it has any questions or if it needs additional information.

Very truly yours,



Donald Potter
California State Bar No. 192735

¹ A PAGA plaintiff is an “aggrieved employee” if they were employed by the alleged violator and had one or more of the alleged violations committed against them. See *Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 82, 84 (2020) (Holding that settlement of individual claims does not strip an aggrieved employee of standing - PAGA plaintiff must satisfy only two requirements, she “must be an aggrieved employee, that is, someone ‘who was employed by the alleged violator’ and ‘against whom one or more of the alleged violations was committed.’”); *Johnson v. Maxim Healthcare Services, Inc.*, 66 Cal. App. 5th 924 (2021) (“[T]he main issue posed by the parties on appeal is whether an employee, whose individual claim is time-barred, may still pursue a representative claim under PAGA. Under [*Kim*], we conclude the answer is yes.”)



LAW OFFICE OF
DONALD POTTER

October 1, 2021

Email address: dp@donpotterlaw.com

SENT VIA CERTIFIED MAIL

UNITED HEALTHCARE SERVICES, INC.
UnitedHealth Group Center
9900 Bren Road East
Minnetonka, Minnesota 55343
Attention: Legal Department

Re: CALIFORNIA LABOR CODE § 2699.3 PAGA NOTICE
RUSHELLE GONDER/ UNITED HEALTHCARE SERVICES, INC.

To Whom It May Concern:

My office represents Rushelle Gonder ("Gonder"), a former employee of United Healthcare Services, Inc. ("UHS"). Pursuant to California Labor Code § 2699.3, this letter serves as Gonder's written notice to the California Labor and Workforce Development Agency ("LWDA") and UHS. On September 30, 2021, this same notice was served by certified mail to your registered agent for service of process in California, CT Corporation System

Factual And Legal Allegations

A. Gonder Was Formerly Employed By UHS in California.

UHS is a Minnesota corporation that provides healthcare administrative services. At all relevant times, UHS conducted business, and employed persons, within the State of California including, but not limited to, at its headquarters located at 5701 Katella Ave, Cypress, California 90630.

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During UHS’s employment of Gonder, UHS failed to provide Gonder with all unpaid meal periods to which she was entitled to receive under California law including, but not limited to: the first unpaid meal period of at least 30 minutes, prior to working more than 5 hours, and the second unpaid meal period of at least 30 minutes, prior to working more than 10 hours. Gonder is informed and believes, and thereon alleges, that UHS also failed to provide legally compliant meal periods to its other California-based non-exempt employees who were compensated with an hourly wage plus non-discretionary bonus.

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If an employer fails to provide an employee with a, “compliant meal, rest, or recovery period, [Cal. Labor Code section 226.7(c)] requires the employer to ‘pay the employee one additional hour of pay at the employee’s regular rate of compensation.’” *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 863 (July 15, 2021). “The calculation of premium pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime pay, must account for not only hourly wages but also other nondiscretionary payments for work performed by the employee.” *Id.*; see also *Marin v. Costco Wholesale Corp.*, 169 Cal.App.4th 804, 807 (2008) (holding that non-discretionary bonus must be included in overtime rate calculation under California law.)

Because UHS did not pay “regular rate” wages for noncompliant meal, rest or recovery periods, UHS violated the Cal. Labor Code § 226.7 and, in turn, did not provide Gonder and similarly-situated employees with all wages owed, compliant itemized wage statements, and all wages owed at termination. Accordingly, Gonder is an “aggrieved employee”¹ and her PAGA action asserts that UHS violated one or more of the following Labor Code provisions: Cal. Labor Code §§ 201, 201(a), 202(a), 203, 204, 226(a), 226.7(a)-(e), 512(a), and 1033.

We are requesting that the LWDA act in accordance with Labor Code §2699.3, et seq. and permit Rushelle Gonder to prosecute the above-mentioned PAGA claims. The LWDA may contact my office if it has any questions or if it needs additional information.

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Donald Potter
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¹ A PAGA plaintiff is an “aggrieved employee” if they were employed by the alleged violator and had one or more of the alleged violations committed against them. See *Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 82, 84 (2020) (Holding that settlement of individual claims does not strip an aggrieved employee of standing - PAGA plaintiff must satisfy only two requirements, she “must be an aggrieved employee, that is, someone ‘who was employed by the alleged violator’ and ‘against whom one or more of the alleged violations was committed.’”); *Johnson v. Maxim Healthcare Services, Inc.*, 66 Cal. App. 5th 924 (2021) (“[T]he main issue posed by the parties on appeal is whether an employee, whose individual claim is time-barred, may still pursue a representative claim under PAGA. Under [*Kim*], we conclude the answer is yes.”)