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Superior Court of California,
County of Monterey
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ELIEZER ANDINO
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF MONTEREY, MONTEREY COURTHOUSE**
10

11 ELIEZER ANDINO, on behalf of all aggrieved
employees,

12 Plaintiff,

13 v.
14

EPIDAUROS dba AMITY FOUNDATION, a
15 California corporation, and DOES 1-25,
inclusive,

16 Defendants.
17

) Case No. 21CV003847

) REPRESENTATIVE ACTION

) **COMPLAINT FOR VIOLATIONS OF**
) **THE PRIVATE ATTORNEYS GENERAL**
) **ACT OF 2004 (Labor Code Section 2698 et**
) **seq.)**

) DEMAND FOR JURY TRIAL
)
)

18 COMES NOW Plaintiff ELIEZER ANDINO, in his representative capacity, with his
19 Complaint against Defendants EPIDAUROS dba AMITY FOUNDATION, a California
20 corporation, and DOES 1 through 25 inclusive, and hereby alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. The California Superior Court has jurisdiction over this action pursuant to California
23 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
24 causes except those given by statute to other trial courts." The Statutes under which this action is
25 brought do not specify any other basis for jurisdiction.

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2. Venue and jurisdiction are proper because Defendants were doing business in Monterey County; Plaintiff's employment was entered into in Monterey County; Plaintiff worked for Defendants in Monterey County; and the damages sought exceed the jurisdictional minimum of this Court.

THE PARTIES

3. Plaintiff ELIEZER ANDINO ("Plaintiff") was at all relevant times herein, an individual residing in Monterey County, California and was employed by Defendants EPIDAUROS dba AMITY FOUNDATION and DOES 1 through 25 inclusive.

4. Plaintiff is informed, believes, and thereon alleges that Defendant EPIDAUROS dba AMITY FOUNDATION ("AMITY") is, and at all times mentioned herein was, a business organized under California laws registered to do business and actively doing business in the State of California, with its principal place of business in Los Angeles, California. At all times hereinafter mentioned, Defendant AMITY was an employer whose employees were engaged in this county and the State of California.

5. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues said Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of the Defendants designed herein as DOE is legally responsible in some manner for the events and happenings referred to herein, and caused injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities of the Defendants designated herein as DOES when the same have been ascertained. Whenever in this Complaint reference is made to "Defendants," such allegation shall be deemed to mean the acts of Defendants acting individually, jointly, or severally.

6. Plaintiff is informed, believes, and thereon alleges that Defendants were his "Employer" as that term is defined in the applicable Wage Order of the Industrial Welfare Commission ("IWC"). Plaintiff is informed and believes and thereon alleges that, at all relevant times mentioned herein, Defendants were Plaintiff's employer.



JOINT LIABILITY

7. Except as hereinafter specially described, Defendants, and each of them, are and were the agents and/or employees of the other Defendants, and in acting as described herein were acting within the scope of their authority or employment as agents and/or employees thereof, and with the permission and consent of the other Defendants.

8. As to each of the Defendants, Plaintiff is informed, believes, and thereon alleges that, at all relevant times mentioned herein, each Defendant was the principal, agent, employer, employee, partner, joint venture, officer, director, controlling shareholder, alter ego, subsidiary, affiliate, parent corporation, successor in interest and predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants, so as to be liable for the conduct of them.

9. Plaintiff is further informed, believes, and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants; and that each Defendant acted pursuant to a conspiracy and agreement to do the things alleged herein.

GENERAL BACKGROUND FACTS

10. Plaintiff was employed by Defendants as a non-exempt counselor from on or about June 15, 2020 to on or about April 27, 2021, when Defendants terminated his employment. Throughout Plaintiff's employment, he performed his duties at the Salinas Valley State Prison and Defendants paid him \$29.00 per hour.

11. A simple review of Defendants' personnel file for Plaintiff shows that neither at the time of Plaintiff's hire, nor any time thereafter, did Defendants provide Plaintiff with a written notice communicating the following: the rate or rates of pay and basis thereof; allowances, if any, claimed as part of the minimum wage; the regular payday designated by the employer; the name of the employer, including "dba" names used; the physical address of the employer's main office of principal place of business; the telephone number of the employer; contact information of the



1 employer's workers' compensation insurance carrier; that the employee may accrue and use sick
2 leave, among other things related; and any other information the Labor Commissioner deems
3 material and necessary.

4 12. Plaintiff is informed and believes that Defendants failed to provide and continue to
5 fail to provide the requisite notice to all other current and/or former non-exempt employees.

6 13. At no point during Plaintiff's employment with Defendants did Defendants allow
7 Plaintiff to clock in/out himself using any sort of timekeeping system. Instead, Defendants'
8 Program Director Sarita Love ("Ms. Love") manually clocked Plaintiff and other non-exempt
9 aggrieved employees in/out and always marked Plaintiff's hours as 7:00 AM to 3:30 PM regardless
10 of his actual hours worked. Defendants' own payroll records for Plaintiff evidence such.

11 14. Defendants' method of failing to maintain accurate records of its non-exempt
12 employees' hours worked resulted in Defendants' failing to pay Plaintiff and other aggrieved
13 employees for any hours worked over eight (8) in a given day.

14 15. Plaintiff oversaw and handled two (2) assigned groups in the morning and early
15 afternoon. These groups were always scheduled from 8:30 AM to 10:30 AM and 11:00 AM to 1:00
16 PM. Between the group sessions, Plaintiff had to walk to a completely different area of the prison
17 and under no circumstances was provided with the opportunity to take a rest and/or meal period at
18 this time. Plaintiff was never provided with a meal period, albeit a non-compliant meal period, until
19 1:00 PM, at the earliest, during each of his shifts throughout his employment with Defendants.

20 16. Regardless of the actual time Plaintiff was able to take a meal period and even in
21 situations in which Plaintiff was unable to take any meal period whatsoever, Ms. Love took the
22 initiative of manually clocking Plaintiff out for meal periods from 11:00 AM to 11:30 AM, likely
23 in an attempt to create a paper trail of compliant meal periods.

24 17. As Defendants' own records for Plaintiff indicate, at no point throughout Plaintiff's
25 employment with Defendants did Defendants provide Plaintiff with a meal premium and/or rest
26 premium of one (1) hours' worth of pay at Plaintiff's regular rate of pay in lieu of Defendants' non-
27 compliant meal and rest periods for Plaintiff.

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18. Plaintiff is informed and believes that Defendants failed to provide and continue to fail to provide compliant meal and rest periods, or premiums in lieu thereof, to all other non-exempt counselors, at a minimum.

19. Not only did Defendants fail to pay Plaintiff all wages due and payable upon separation of employment, but Defendants still have not paid all wages due and payable to Plaintiff. Therefore, Plaintiff is entitled to the full thirty (30) days of waiting time penalties for Defendants' failure to pay all wages due and payable at separation of employment.

20. Upon information and belief, all current and/or former non-exempt employees of Defendants are considered aggrieved employees as defined under Labor Code section 2699(c) and were/are subject to similar, if not the same, violations as Plaintiff. Such violations include, but are not limited to, Failure to Pay All Wages Including Minimum Wage and Overtime Wages, Failure to Provide Meal and Rest Periods, Failure to Provide Notice to Employee, Failure to Maintain Accurate Records, Failure to Provide Accurate Itemized Wage Statements, and Failure to Pay All Wages Due and Payable at Separation of Employment.

21. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 *et seq.* on behalf of the State of California and on a representative basis on behalf of all California current and former employees of Defendants'.

22. Plaintiff filed a PAGA Notice with the Labor and Workforce Development Agency ("LWDA") on September 29, 2021. Therefore, Plaintiff has waited the mandatory sixty-five (65) days since filing his PAGA Notice and the LWDA has chosen not to intervene.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004 ("PAGA")

(Labor Code § 2698 *et seq.*)

(Against All Defendants)

23. Plaintiff realleges and incorporates each preceding paragraph as though fully set forth herein.

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1 24. California Labor Code sections 2698-2699.5, in relevant part, provides, “any
2 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
3 Workforce Development Agency. . . for a violation of this code may, as an alternative, be
4 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself
5 and other current or former employees pursuant to the procedures specified in section 2699.3.”

6 25. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
7 PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged
8 to have been violation, and after receiving notice from the LWDA of its intention not to investigate,
9 or after sixty-five (65) days have passed without notice.

10 26. To the extent applicable, Plaintiff has satisfied in full the requirements of Labor
11 Code section 2699.3. Plaintiff sent notice to AMITY, AMITY’s agent for service of process, and
12 the LWDA on or about September 29, 2021, detailing AMITY’s alleged Labor Code violations. In
13 particular, Plaintiff’s notice alleged violations of Labor Code sections 1194; 510; 1198; 226.7; 512;
14 2810.5; 1174; 1174.5; 1175; 226; and 203.

15 27. LWDA did not provide notice of its intention to investigate Defendants’ alleged
16 violations within sixty-five (65) calendar days of the postmark date of Plaintiff’s notice.

17 28. Plaintiff is an “aggrieved employee” under PAGA because she was employed by
18 AMITY during the applicable statutory period and suffered one or more of the Labor Code
19 violations set forth in this Complaint.

20 29. Plaintiff seeks to recover, on her behalf, on behalf of the State, and on behalf of all
21 former and current aggrieved employees of Defendants, the civil penalties provided by PAGA, plus
22 reasonable attorney’s fees and costs through a representative action permitted by PAGA and the
23 California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Therefore, class
24 certification is not required.

25 30. Plaintiff seeks penalties pursuant to PAGA for the following Labor Code violations:

26 A. Failure to pay minimum wage in violation of Labor Code section 1194;

27 B. Failure to pay all wages including overtime wages in violation of Labor Code
28 sections 510, 1194, and 1198;



- 1 C. Failure to provide meal and rest periods in violation of Labor Code sections
2 226.7 and 512;
- 3 D. Failure to maintain accurate records in violation of Labor Code sections 1174,
4 1174.5, and 1175;
- 5 E. Failure to provide accurate itemized wage statements in violation of Labor Code
6 section 226;
- 7 F. Failure to provide requisite notice to employee in violation of Labor Code
8 section 2810.5; and
- 9 G. Failure to pay all wages due and payable upon separation of employment in
10 violation of Labor Code section 203.

11 31. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars
12 (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars
13 (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code
14 provisions for which a civil penalty is not specifically provided.

15 32. As a proximate result of the action and conduct described in the paragraphs above,
16 which constitute violations of certain Labor Code sections, Plaintiff and all other aggrieved
17 employees have been damaged in an amount according to proof at the time of trial and seeks civil
18 penalties and attorney's fees pursuant to Labor Code section 2699(f) and (g) against Defendants.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays, individually and on behalf of aggrieved employees,
21 judgment against Defendants, and each of them, as follows:

- 22 1. For an award of civil penalties pursuant to PAGA;
- 23 2. For an award of reasonable attorney's fees and costs pursuant to Labor Code section
24 2699(g) and/or other applicable law;
- 25 3. For pre-judgment and post-judgment interest as provided by law; and
- 26 4. For such other and further relief as the Court deems just and proper.

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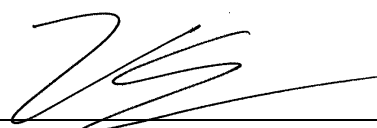


DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Dated: December 7, 2021

KRING & CHUNG, LLP

By: 

Tyler D. Kring
Attorneys for Plaintiff
ELIEZER ANDINO

