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and Aggrieved Employees

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

MONIQUE GAINES, as an individual and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

HSS INC., a Colorado corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21CV003712

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF LABOR
CODE § 2698, *ET SEQ.***

DEMAND OVER \$25,000

1 Plaintiff Monique Gaines (“Plaintiff”) hereby submits this representative action
2 complaint (“Complaint”) against Defendant HSS Inc. (“Defendant”) and Does 1-50 (collectively,
3 “Defendants”), on behalf of herself and all other aggrieved employees for penalties pursuant to
4 the Private Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), for violations of the
5 California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code §§ 201-203, 226(a), 226.7, 512, and 2698, *et seq.*, and the applicable Wage Orders
9 of the California Industrial Welfare Commission (“IWC”).

10 1. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 2. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to properly pay meal and rest period premium
15 pay, failing to pay all wages owed upon separation of employment, and failing to provide
16 accurate itemized wage statements to Plaintiff and other employees that comply with the
17 California Labor Code.

18 3. 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 employees the
21 above stated rights and benefits.

22 **JURISDICTION AND VENUE**

23 4. The Court has jurisdiction over the violations of the California Labor Code §§
24 201-203, 226(a), 226.7, 512, and 2698, *et seq.*, and the IWC Wage Orders.

25 5. Venue is proper in Monterey County because Defendants do business in
26 Monterey County, and the alleged violations occurred in Monterey County, amongst other
27 counties in California.

28 ///

PARTIES

6. Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from on or about January 17, 2021, until on or about August 26, 2021. Throughout her employment with Defendant, Plaintiff worked as a security officer and was a non-exempt, hourly employee.

7. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code §§ 201-203, 226, 226.7, 512, and 2698, *et seq.*, and the IWC Wage Orders.

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant HSS Inc. was and is a Colorado corporation doing business in the State of California, and in the County of Monterey. Plaintiff is informed and believes, and based thereon alleges, that Defendant provides security officer services across the United States and in the State of California, including healthcare security services, aviation security services, and government facility security services.

9. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7, 512, and 2698, *et seq.*, and the IWC Wage Orders.

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

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

12. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

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

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

FIRST CAUSE OF ACTION

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

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

15. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set for herein.

16. Plaintiff brings this cause of action as a proxy for the State of California and in

1 this capacity, seeks penalties on behalf of all aggrieved employees of Defendants in the State of
2 California, at any time from September 24, 2020, through the present (“Aggrieved Employees”),
3 for Defendants’ violations of Labor Code §§ 201-203, 226(a), 226.7, and 512.

4 17. Labor Code § 226.7 provides that “the employer shall pay the employee an
5 additional hour of pay at the employee’s regular rate of compensation for each workday the meal
6 or rest or recovery period is not provided.”

7 18. Here, Plaintiff and Aggrieved Employees regularly earned non-discretionary
8 incentive pay, including Uniform Pay. However, such non-discretionary remuneration was not
9 factored into the regular rate of pay for purposes of paying meal and rest period premium pay.
10 Instead, during periods when employees earned non-discretionary remuneration and was paid
11 meal and/or rest period premium pay, the meal and/or rest period premium pay were paid at the
12 employee’s base hourly rate of pay only. Thus, the meal and rest period premium pay were paid
13 below the regular rate of pay, in violation of Labor Code §§ 226.7 and 512. As such, Plaintiff
14 and Aggrieved Employees are owed additional meal and rest period premiums based on the
15 correct, higher regular rate of pay.

16 19. Due to the unpaid meal and rest period premium pay as alleged above, Defendants
17 have also violated Labor Code §§ 201-203 by failing to pay Plaintiff and Aggrieved Employees
18 all wages owed upon separation of employment.

19 20. In addition, Defendants have also failed in their affirmative obligation to provide
20 accurate itemized wage statements in violation of Labor Code § 226(a). As a result of the failure
21 to properly pay meal and rest period premiums based on the correct regular rate of pay, the
22 corresponding wage statements issued to Plaintiff and Aggrieved Employees failed to accurately
23 identify the hourly rates of pay, gross wages earned, and net wages earned.

24 21. As a separate violation of Labor Code § 226(a)(9), the wage statements issued by
25 Defendants failed to identify the applicable rate of pay and number of hours used to calculate
26 Uniform Pay wages.

27 22. On or about September 24, 2021, Plaintiff sent written notice to the California
28 Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code

§§ 201-203, 226(a), 226.7, and 512, pursuant to PAGA. Plaintiff also sent the PAGA notice to Defendant via certified mail according to Labor Code § 2699.3.

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

24. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violations of Labor Code §§ 201-203, 226(a), 226.7, and 512, for the time period described above, on behalf of herself and other Aggrieved Employees.

PRAYER FOR RELIEF

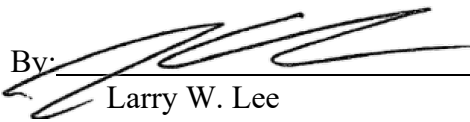
WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for the full amount of civil penalties pursuant to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees as provided by Labor Code § 2699 and Code of Civil Procedure § 1021.5; and

2. For such other and further relief the Court may deem just and proper.

DATED: November 29, 2021

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

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Attorneys for Plaintiff Monique Gaines and
Aggrieved Employees