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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

22CV399893

MATTHEW ONG, as an individual and on
behalf of aggrieved employees,

Plaintiff,

vs.

EHEALTHINSURANCE SERVICES,
INC., a Delaware corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.:

**REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

Plaintiff Matthew Ong ("Plaintiff") hereby submits this representative action complaint
("Complaint") against Defendant eHealthInsurance Services, Inc. and Does 1 through 50

(collectively, “Defendants”), on behalf of himself and all other aggrieved employees of Defendants for penalties for violations of the California Labor Code, as follows:

INTRODUCTION

1. This action is within the Court’s jurisdiction under California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*

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

3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by failing to: (a) properly pay minimum, regular and overtime wages for all hours worked off-the-clock; (b) provide compliant meal breaks, or pay meal period premiums in lieu thereof; (c) properly calculate the regular rate of pay for purposes of paying meal and/or rest period premium pay; (d) pay sick pay at the regular rate of pay; (e) pay all wages owed upon separation of employment; and (f) provide accurate itemized wage statements.

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

JURISDICTION AND VENUE

5. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*

6. Venue is proper in Santa Clara because Defendants are located in Santa Clara, California, and Plaintiff worked for Defendants in Santa Clara, California.

PARTIES

7. Plaintiff was employed by Defendants as a non-exempt employee from about July 2021, until on or about April 4, 2022.

8. Plaintiff was and is the victims of the policies, practices, and customs of

1 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
2 by California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1,
3 the applicable IWC Wage Orders, and the UCL.

4 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant was
5 and is a Delaware corporation that maintains operations in the State of California, including in
6 Santa Clara County. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendant is an online insurance broker and sells health insurance policies, including in the State
8 of California.

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

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

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

26 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
28 joint venturer of, or working in concert with each of the other co-Defendants and was acting

1 within the course and scope of such agency, employment, joint venture, or concerted activity. To
2 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
3 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
4 Defendants.

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

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

15 **FIRST CAUSE OF ACTION**

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

17 **(BY PLAINTIFF, ON BEHALF OF AGGRIEVED EMPLOYEES, AGAINST ALL**
18 **DEFENDANTS)**

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

21 17. Plaintiff brings this cause of action as a proxy for the State of California and in
22 this capacity, will seek penalties on behalf of all Aggrieved Employees from April 29, 2021,
23 through the present, for Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 246, 510,
24 512, 558, 1194, 1197, and 1197.1, arising from Defendants' policy and practice of: (a) failing to
25 pay all minimum, regular, and overtime wages, and meal period premiums owed in violation of
26 Labor Code §§ 201-204, 226.7, 510, 558, 1194, 1197, and 1197.1; (b) failing to pay employees
27 meal period premium wages at the correct regular rate of pay that included all non-discretionary
28 remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to pay

1 employees rest period premium wages at the correct regular rate of pay that included all
2 nondiscretionary remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failing to
3 pay employees sick pay at the correct regular rate of pay, in violation of Labor Code §§ 201-204
4 and 246; and (e) failing to provide accurate itemized wage statements in violation of Labor Code
5 § 226.

6 18. Specifically, Plaintiff and Aggrieved Employees were required to boot up their
7 computers, log-in, and use their cell phones to authenticate the log-in process, at the start of each
8 work shift and during their meal breaks. This procedure was done entirely off-the-clock. As a
9 result of such policy and practice, Plaintiff and Aggrieved Employees were not paid all
10 minimum, regular, overtime wages, and meal period premiums owed for said off-the-clock work.
11 In addition, Plaintiff and Aggrieved Employees earned non-discretionary remuneration such as
12 bonuses and incentives. During periods when Plaintiff and Aggrieved Employees earned non-
13 discretionary pay and were paid meal period premiums, rest period premiums, and/or sick pay,
14 the non-discretionary remuneration was not factored into the regular rate of pay. Instead,
15 Defendants paid the meal period premiums, rest period premiums, sick pay wages at the base
16 rate of pay. As such, Plaintiff and Aggrieved Employees are owed additional wages based on the
17 correct regular rate of pay. Defendants have yet to pay employees the underpaid wages owed
18 within the deadlines set forth in Labor Code §§ 201-204. As such, Plaintiff and Aggrieved
19 Employees are owed waiting time penalties. Lastly, as a result of the underpayment of wages, the
20 wage statements issued to Plaintiff and Aggrieved Employees displayed inaccurate rates of pay,
21 total hours worked, net wages earned, and gross wages earned.

22 19. On or about April 29, 2022, Plaintiff sent written notice to the California Labor &
23 Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-
24 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to Labor Code § 2698, *et*
25 *seq.*, the Private Attorneys General Act (“PAGA”). As of the date of the filing of this Complaint,
26 the LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate the
27 violations provided for in the written notice. In addition to the LWDA, Plaintiff also sent his
28 written notice to Defendants via certified mail according to Labor Code § 2699.3.

20. As such, pursuant to Labor Code § 2699(a), Plaintiff will seek recovery of any and all applicable civil penalties for Defendants' violation of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

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

2. Upon the First Cause of Action, for civil penalties pursuant to California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

3. On all causes of action for attorneys' fees and costs as provided by California Labor Code §§ 218.5 and 2699, and Code of Civil Procedure § 1021.5; and

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

DATED: July 5, 2022

DIVERSITY LAW GROUP, P.C.

By:

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Max W. Gavron

Mai Tulyathan

Attorneys for Plaintiff and Aggrieved Employees