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STK-CV-UOE-2022-0004255

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

ANGELICA CARDENAS, an individual,

Plaintiff,

vs.

LODI SKILLED NURSING SERVICES,
INC., a corporation dba Fairmont
Rehabilitation Hospital; and DOES 1-100,
inclusive,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

1. FAILURE TO PAY OVERTIME AT CORRECT RATE
2. FAILURE TO PROVIDE PAID SICK LEAVE AT CORRECT RATE
3. FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS AT CORRECT RATE
4. FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS AT CORRECT RATE
5. UNFAIR COMPETITION
6. FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT
7. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

JURY TRIAL DEMANDED

Plaintiff Angelica Cardenas brings this class action against Lodi Skilled Nursing Services, Inc., a corporation dba Fairmont Rehabilitation Hospital; and Does 1 through 100, for violations of the Labor Code.

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1 **PARTIES**

2 1. Angelica Cardenas (“Cardenas” or “Plaintiff”) is and at all times relevant herein was
3 employed in San Joaquin County, California, and was an “employee” as defined by the Labor Code
4 and the applicable California Industrial Wage Commission (“IWC”) Order(s).

5 2. Lodi Skilled Nursing Services, Inc. (“LSNSI” or “Defendant”) is a California
6 corporation formed under the laws of that state, and does business as Fairmont Rehabilitation Hospital
7 in Lodi, California.

8 3. At all times relevant herein, LSNSI has been an “employer” under the Labor Code and
9 the applicable California Industrial Wage Commission (“IWC”) Order(s).

10 4. LSNSI and Does 1-100 are collectively referred to as Defendants.

11 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
12 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
13 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
14 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
15 of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged
16 and that Plaintiff’s injuries and damages herein alleged were legally caused by such Defendants.
17 Unless otherwise indicated, each Defendant was acting within the course and scope of said agency
18 and/or employment, with the knowledge and/or consent of said co-Defendant.

19 6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
20 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
21 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
22 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
23 within the course and scope of such agency, service, employment partnership, joint venture and/or
24 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
25 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
26 the remaining Defendants.

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8. Cardenas was hired by LSNSI to work at Fairmont Rehabilitation Hospital in Lodi, California on or around July 21, 2021. Cardenas' position was Certified Nursing Assistant. Her employment with LSNSI ended on April 21, 2022. At all times throughout her employment, Cardenas was an hourly employee, eligible for overtime.

9. LSNSI frequently failed to pay Cardenas and other employees their earned overtime at 1.5 times her “regular rate of pay”, resulting in an underpayment of wages. In addition to hourly pay, Cardenas and the other employees frequently earned nondiscretionary bonuses, as well as other items of compensation (including but not limited to “hero pay”—pay for working during times of understaffing). However, LSNSI ignored the value of these earned nondiscretionary bonuses and other items of compensation when calculating its employees’ “regular rate of pay” for purposes of overtime. (See DLSE Enforcement Policies and Interpretations Manual, § 49.) Instead, LSNSI paid earned overtime at a lesser rate that did not adequately account for the value of earned nondiscretionary bonuses and other items of compensation. (**Exhibit 1.**) Thus, LSNSI violated Labor Code section 510.

11. Cardenas and other California employees of LSNSI were also frequently denied rest and meal periods to which they was entitled. Due to the demands of the job and frequent

1 understaffing, Cardenas was often unable to take a ten-minute rest period for every four hours
2 worked and a thirty-minute meal period for every workshift of more than five hours. On these
3 occasions, Cardenas and other employees were not relieved of all duty and permitted the
4 opportunity to take such breaks. Further, employees were not paid an hour of pay at the regular rate
5 of compensation (aka “premium pay”) for every rest and meal period that was not provided in
6 accordance with the Labor Code and applicable Wage Orders of the Industrial Welfare
7 Commission. To the extent that such premiums were paid, the value of nondiscretionary bonuses
8 and other items of compensation were not included in the calculation thereof. (See **Exhibit 3**; *Ferra*
9 *v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) Accordingly, LSNSI violated Labor Code
10 sections 226.7 and 512.

11 12. Due to the aforementioned wage-and-hour violations, the itemized wage statements
12 furnished to Cardenas and other California employees of LSNSI did not accurately show the gross
13 wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during
14 the pay period and the corresponding number of hours worked at each hourly rate, in violation of
15 Labor Code section 226, subdivisions (a)(1), (2), (5), and (9). Further compounding the inaccuracy
16 of the “total hours” figure was that employees’ overtime hours, as shown on the wage statements,
17 were “double-counted” (due to LSNSI’s separation of employees’ overtime rate into the “base rate”
18 and the “overtime premium”). (See Exhibit 1, *supra*.)

19 13. Defendants were, at all times relevant herein, aware of the requirements of California
20 Labor Code section 226.

21 14. Defendants have, at all times relevant herein, furnished wage statements to each of its
22 California employees pursuant to an established set of policies, procedures and practices.

23 15. Cardenas and Defendants’ other California employees, both current and former, have
24 suffered injury as a result of Defendants’ knowing and intentional failure to comply with California
25 Labor Code section 226(a).

26 16. Cardenas and Defendants’ other nonexempt California employees, both current and
27 former, were unable to promptly and easily determine their gross wages earned, total hours worked, net
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1 wages earned, and all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked, from the wage statements furnished by Defendants.

3 17. Cardenas and Defendants' other nonexempt California employees, both current and
4 former, have suffered injury as a result of Defendants' knowing and intentional failure to furnish wage
5 statements accurately showing all information required by Labor Code section 226(a).

6 18. At no point since the severance of Cardenas' employment did LSNSI pay her all
7 earned but unpaid overtime wages, sick leave, and rest and meal period premiums, *supra*.
8 Accordingly, LSNSI violated Labor Code section 203.

9 19. From at least four years prior to the filing of this action, LSNSI has adopted and
10 employed unfair business practices. These unfair business practices include, but are not limited to,
11 failing to provide rest and meal periods, and to properly calculate and pay all earned overtime, meal
12 and rest period premiums, and sick pay, *supra*.

13 20. The foregoing list of misconduct is a partial list only and set forth by way of mere
14 example.

15 **CLASS ACTION ALLEGATIONS**

16 21. Cardenas brings the First through Seventh Causes of Action as a class action, on behalf
17 of herself and all others similarly situated, pursuant to Code of Civil Procedure 382. The classes which
18 Cardenas seeks to represent consist of the following:

- 19
- 20 a. All current and former nonexempt California employees of Defendants who
21 received nondiscretionary bonuses and/or other items of compensation and
22 worked overtime during one or more pay periods at any time from four years
23 prior to the filing of this Complaint through the entry of final judgment in this
24 action (the "Overtime Class");
- 25 b. All current and former nonexempt California employees of Defendants who
26 received nondiscretionary bonuses and/or other items of compensation and
27 received sick pay during one or more pay periods at any time from four years
28 prior to the filing of this complaint through the entry of final judgment in this
action (the "Sick Pay Class");
- c. All current and former nonexempt California employees of Defendants who
worked at least one workday of four hours or more during one or more pay

1 periods at any time from four years prior to the filing of this complaint
2 through the entry of final judgment in this action (the “Rest and Meal Break
3 Class”);

4 d. All members of the Overtime Class, Meal and Rest Break Class, and Sick Pay
5 Class who received one or more wage statements at any time from one year
6 prior to the filing of this complaint through the entry of final judgment in this
7 action (the “Wage Statement Class”); and

8 e. All members of the Overtime Class, Meal and Rest Break Class, and Sick Pay
9 Class whose employment with Defendants ended at any time from three years
10 prior to the filing of this Complaint through the entry of final judgment in this
11 action (the “Waiting Time Penalty Class”).

12 The Overtime Class, the Sick Pay Class, the Rest and Meal Break Class, the Wage Statement Class,
13 and the Waiting Time Penalty Class are collectively referred to as “the Class.”

14 22. The Class is so numerous that joinder of all members is impracticable, and the
15 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
16 informed and believes, and based thereon alleges, that Defendants employ more than 200 employees
17 who satisfy the class definition. Although the exact number and identity of class members is not
18 presently known, they can be identified in Defendants’ records through coordinated discovery pursuant
19 to this class action.

20 23. This action may be maintained as a class because the questions of law and fact which are
21 common to class members clearly predominate over any questions affecting only individual members
22 and because a class action is superior to other available methods for adjudicating the controversy.

23 24. There are numerous common questions of law and fact arising out of Defendants’
24 conduct. This class action focuses on Defendants’: (a) systematic failure to properly calculate and pay
25 overtime; (b) systematic failure to properly calculate and pay sick leave; (c) systematic failure to
26 provide rest and meal periods or pay premiums at the correct regular rate of compensation; (d)
27 systematic failure to comply with Labor Code section 226(a); and (e) systematic failure to pay all
28 wages upon cessation of employment.

1 25. Furthermore, common questions of fact and law predominate over any questions
2 affecting only individual members of the class. The predominating common or class-wide questions of
3 law and fact include the following:

- 4 a. Whether Defendants failed to properly calculate and pay their nonexempt
5 California employees with overtime;
- 6 b. Whether Defendants failed to properly calculate and pay their nonexempt
7 California employees with paid sick leave;
- 8 c. Whether Defendants failed to provide their California employees with rest and
9 meal periods;
- 10 d. Whether Defendants failed to properly calculate and pay their nonexempt
11 California employees with rest and meal period premiums;
- 12 e. Whether the wage statements Defendants furnished to their California employees
13 complied with Labor Code section 226;
- 14 f. Whether Defendants failed to pay their nonexempt California employees all
15 wages due upon cessation of employment;
- 16 g. Whether the alleged violations of the Labor Code constitute unfair business
17 practices;
- 18 h. Whether the Class is entitled to injunctive relief; and
- 19 i. Whether the Class is entitled to unpaid wages, statutory penalties, and/or
20 restitutionary relief, and the amount of the same.

21 26. Cardenas' claims are typical of the claims of the members of the Class as a whole, all of
22 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
23 alleged violations of Defendants. Cardenas' claims are typical of those of the Class because
24 Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

25 27. The defenses of Defendants, to the extent that such defenses apply, are applicable
26 generally to the whole Class and are not distinguishable as to the proposed class members.

1 28. Cardenas will fairly and adequately protect the interests of all members of the Class, and
2 has retained attorneys with extensive experience in litigation, including class and representative actions.
3 Plaintiff has no interests that conflict with those of the Class. Cardenas is able to fairly and adequately
4 protect the interests of all members of the class because it is in her best interest to prosecute the claims
5 alleged herein in order to obtain the full compensation due herself and the other class members.

6 29. A class action is superior to any other method available for fairly and efficiently
7 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
8 litigating the claims of individual class members would be unnecessarily costly and burdensome and
9 would deter individual claims, 3) litigating the claims of individual class members would create a risk
10 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
11 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
12 bring individual claims, 5) class members would be discouraged from pursuing individual claims
13 because the damages available to them are relatively small, and 6) public policy encourages the use of
14 the class actions to enforce employment laws and protect individuals who, by virtue of their
15 subordinate position, are particularly vulnerable.

16 30. Judicial economy will be served by maintenance of this lawsuit as a class action. To
17 process numerous virtually identical individual cases will significantly increase the expense on the
18 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
19 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
20 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
21 to, efficiency, economy, and uniform adjudication with consistent results.

22 31. Notice of a certified class action and any result or resolution of the litigation can be
23 provided to class members by mail, email, publication, or such other methods of notice as deemed
24 appropriate by the Court.

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FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME AT CORRECT RATE
(Lab. Code § 510 & 1198)
By Plaintiff and the Overtime Class Against Defendants

32. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

33. Pursuant to Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

34. The “regular rate of pay” includes all remuneration for employment paid to the employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, commissions, non-discretionary bonuses, and the value of meals and lodging. (See 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.)

35. Pursuant to Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the Commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the Commission or under conditions of labor prohibited by the order is unlawful.

36. During the relevant time period, Plaintiff and other class members regularly worked overtime and doubletime.

37. During the relevant time period, Defendants intentionally and willfully failed to pay the proper overtime/doubletime wages due to Plaintiff and other class members.

38. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief as hereafter provided.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE SICK LEAVE AT CORRECT RATE
(Lab. Code, §§ 218, 233, 246 *et seq.*)
By Plaintiff and the Sick Pay Class Against Defendants

39. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

40. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt employees at that employee's "regular rate of pay."

41. According to the California Supreme Court, sick pay is a form of wages. (*Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.)

42. The "regular rate of pay" includes all remuneration for employment paid to the employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

43. Labor Code section 233 provides that "any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5."

44. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other class members sick pay as required by law. Accordingly, Plaintiff and other class members did not receive the full amount of paid sick time that they were entitled to receive by law, and were therefore denied the right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

45. Any employer who violates Labor Code section 233 is liable to employees for the greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys' fees and costs. (Lab. Code, § 233, subs. (d), (e).)

1 46. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
2 wages.

3 47. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief
4 as hereafter provided.

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS AT CORRECT RATE**
7 **(Lab. Code, § 226.7)**
8 **By Plaintiff and the Rest and Meal Break Class Against Defendants**

9 48. Plaintiff hereby realleges and incorporates by reference each and every allegation set
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 49. Labor Code section 226.7 requires employers to provide employees meal periods as
13 mandated by Order of the Industrial Welfare Commission. It states:

- 14 a. No employer shall require any employee to work during any meal or rest period
15 mandated by an applicable order of the Industrial Welfare Commission.
- 16 b. If an employer fails to provide an employee a meal period or rest period in
17 accordance with an applicable order of the Industrial Welfare Commission, the
18 employer shall pay the employee one additional hour of pay at the employee's
19 regular rate of compensation for each work day that the meal or rest period is
20 not provided.

21 50. Section 11 of the applicable IWC Wage Order provides:

22 “(A) Every employer shall authorize and permit all employees to take rest periods, which
23 insofar as practicable shall be in the middle of each work period. Nothing in this provision
24 shall prevent an employer from staggering rest periods to avoid interruption in the flow
25 of work and to maintain continuous operations, or from scheduling rest periods to
26 coincide with breaks in the flow of work that occur in the course of the workday. The
27 authorized rest period time shall be based on the total hours worked daily at the rate of
28 ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof.
Rest periods shall take place at employer designated areas, which may include or be
limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of
continuous operations would jeopardize the product or process of the work. However,

1 the employer shall make up the missed rest period within the same workday or
2 compensate the employee for the missed ten (10) minutes of rest time at his/her regular
rate of pay within the same pay period.

3 (C) A rest period need not be authorized for employees whose total daily work time is
4 less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as
hours worked for which there shall be no deduction from wages.

5 (D) If an employer fails to provide an employee a rest period in accordance with the
6 applicable provisions of this order, the employer shall pay the employee one (1) hour of
7 pay at the employee's regular rate of compensation for each workday that the rest period
is not provided."

8 51. The "regular rate of compensation", for purposes of rest and meal break premiums,
9 must account for not only hourly wages but also other nondiscretionary payments for work performed
10 by the employee. (*Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021, S259172), __Cal.5th__.)

11 52. During the relevant time period, Plaintiff and other members of the Rest and Meal
12 Break Class were not provided with rest breaks as required by law and did not receive an additional
13 hour of premium pay at their regular rate of compensation for each missed rest break.

14 53. Wherefore, Plaintiff and the other members of the Rest and Meal Break Class have
15 been injured and request relief as hereinafter provided.

16 **FOURTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS AT CORRECT RATE**
18 **(Lab. Code, §§ 226.7, 512)**
19 **By Plaintiff and the Rest and Meal Break Class Against Defendants**

20 54. Plaintiff hereby realleges and incorporates by reference each and every allegation set
21 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

22 55. Labor Code section 226.7 requires employers to provide employees meal periods as
23 mandated by Order of the Industrial Welfare Commission. It states:

24 a. No employer shall require any employee to work during any meal or rest period
25 mandated by an applicable order of the Industrial Welfare Commission.
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1 b. If an employer fails to provide an employee a meal period or rest period in
2 accordance with an applicable order of the Industrial Welfare Commission, the
3 employer shall pay the employee one additional hour of pay at the employee's
4 regular rate of compensation for each work day that the meal or rest period is
5 not provided.

6 56. The "regular rate of compensation", for purposes of rest and meal break premiums,
7 must account for not only hourly wages but also other nondiscretionary payments for work performed
8 by the employee. (*Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021, S259172), __Cal.5th__.)

9 57. Labor Code section 512(a) and applicable Wage Order(s) of the Industrial Welfare
10 Commission provide that an employer may not employ a person for a work period of more than five
11 hours per day without providing that employee a meal period of not less than thirty minutes, except
12 that if the total work period per day is no more than six hours, the meal period may be waived by
13 mutual consent of both the employer and employee. An employer may not employ a person for a
14 work period of more than ten hours per day without providing an employee with a second meal period
15 of not less than thirty minutes, except that if the total work period per day of the employee is no more
16 than twelve hours, the meal period may be waived by mutual consent of both the employer and the
17 employee, and if the first meal period was not waived.

18 58. During the relevant time period, Plaintiff and other members of the Rest and Meal
19 Break Class were not provided with meal breaks as required by law and did not receive an additional
20 hour of premium pay at their regular rate of compensation for each missed meal period.

21 59. Wherefore, Plaintiff and the other members of the Rest and Meal Break Class have
22 been injured and request relief as hereinafter provided.

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FIFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code, § 17200, *et seq.*)

By Plaintiff and the Overtime Class, the Sick Pay Class, and the Rest and Meal Break Class
Against Defendants

60. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

61. The statutory violations, as alleged above, are unfair business practices within the meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and include, but are not limited to, failing to properly calculate and pay overtime, failing to provide rest and meal periods or pay premiums at the correct rate, and to properly calculate and pay sick wages.

62. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief as hereafter provided.

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT
(Lab. Code, § 201, *et seq.*)
By Plaintiff and the Waiting Time Penalty Class Against Defendants

63. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

64. Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

65. Labor Code section 202 requires an employer to pay an employee all earned wages within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting if the employee has given 72 hours previous notice of his or her intention to quit.

66. As set forth above, Plaintiff and other class members were not timely paid all earned but unpaid wages when their employment with Defendants ended.

67. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief as hereafter provided.

SEVENTH CAUSE OF ACTION
FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226(a))
By Plaintiff and the Wage Statement Class Against Defendants

68. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

69. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

70. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. (Lab. Code, § 226, subd. (e)(1).)

71. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and

1 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
2 during the pay period or any of the other information required to be provided pursuant to Labor Code
3 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
4 and address of the employer and iv) the name of the employee and the last four digits of his or her
5 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
6 (iv).) “Promptly and easily determine” means a reasonable person would be able to readily ascertain
7 the information without reference to other documents or information. (Lab. Code, § 226, subd.
8 (e)(2)(C).)

9 72. As set forth above, Defendants intentionally and willfully failed to furnish accurate
10 itemized wage statements which complied with Labor Code section 226.

11 73. Wherefore, Plaintiff and the Class have been injured as set forth above and request relief
12 as hereafter provided.

13 PRAYER FOR RELIEF

14 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 15 1. That this Court certify the Class;
- 16 2. That this Court appoint Cardenas as Class Representative;
- 17 3. That this Court appoint Mayall Hurley P.C. as Class Counsel;
- 18 4. That this Court award actual and compensatory damages, as well as restitutionary
19 relief, to Cardenas and other members of the Class, including but not limited to the
20 remedies provided for under Labor Code section 233(d);
- 21 5. That this Court award injunctive relief, including that available under Labor Code
22 sections 226(h) and 248.5(e), as well as Business and Professions Code section 17203;
- 23 6. That this Court award statutory penalties including, but not limited to, those available
24 under Labor Code sections 203 and 226;
- 25 7. That this Court award statutory attorneys’ fees and costs, including those available
26 under Labor Code sections 218.5, 226(e)(1) and (h), 233(e), 248.5(e), 1194, as well as
27 those available under Code of Civil Procedure section 1021.5;

- 1 8. That this Court award prejudgment and post-judgment interest according to any
2 applicable provision of law or as otherwise permitted by law; and
3 9. That this Court award such other and further relief as the court deems just and proper.

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5 **DATED:** May 25, 2022

MAYALL HURLEY P.C.

6 By _____


7 ROBERT J. WASSERMAN
8 JOHN P. BRISCOE
9 Attorneys for Plaintiff
10 ANGELICA CARDENAS

EXHIBIT 1

Pay Statement



Lodi Skilled Nursing Services, Inc.
950 S. Fairmont Avenue
Lodi, CA 95240
949-373-8364

Pay Statement

Period Start Date 11/16/2021
Period End Date 11/30/2021
Pay Date 12/10/2021
Document 97913
Net Pay \$1,391.35

Pay Details

ANGELICA CARDENAS

Employee Number 054102110 Pay Group NACS4
SSN XXX-XX-XXXX Location Lodi Skilled Nursing Serv
Job Cert Nursing Assistant Region NORTH - North
Pay Rate \$19.5000 Department NRADOD - Nursing - Aides/Orderlies
Pay Frequency Semi-Monthly Facility 036 - Fairmont Rehab Hospital

Earnings

Pay Type	Hours	Pay Rate	Current	YTD
Regular Pay-Hourly	52.5800	\$19.5000	\$1,025.31	\$10,347.82
Overtime	2.0800	\$19.5000	\$40.56	\$469.39
Paid Time Off	16.0000	\$19.5000	\$312.00	\$312.00
Bonus			\$25.00	\$25.00
Covid Sick	0.0000	\$0.0000	\$0.00	\$592.00
Hero Pay			\$149.76	\$230.35
Meal Pay Prem	0.0000	\$0.0000	\$0.00	\$92.50
Overtime Prem	2.0800	\$9.9787	\$20.76	\$235.18
Training	0.0000	\$0.0000	\$0.00	\$9.25

Total Hours 72.7400

Deductions

Deduction	Pre-Tax	Employee Current	Employee YTD	Employer Current	Employer YTD
No records found					

Taxes

Tax	Current	YTD
Federal Income Tax	\$5.50	\$5.50
Employee Medicare	\$22.82	\$178.55
Social Security Employee Tax	\$97.55	\$763.44
CA State Income Tax	\$37.29	\$258.03
CA Disability Employee	\$18.88	\$147.77

Paid Time Off

Plan	Taken	Current	Balance
Paid Time Off	16.0000	3.6955	14.8847

Net Pay Distribution

Account Number	Account Type	Amount
	Checking	\$1,391.35
Total		\$1,391.35

Pay Summary

	Gross	FIT Taxable Wages	Taxes	Deductions	Net Pay
Current	\$1,573.39	\$1,573.39	\$182.04	\$0.00	\$1,391.35
YTD	\$12,313.49	\$12,313.49	\$1,353.29	\$0.00	\$10,960.20

EXHIBIT 2

Pay Statement



Lodi Skilled Nursing Services, Inc.
950 S. Fairmont Avenue
Lodi, CA 95240
949-373-8364

Pay Statement

Period Start Date 12/19/2021
Period End Date 01/01/2022
Pay Date 01/07/2022
Document 105029
Net Pay \$1,240.59

Pay Details

ANGELICA CARDENAS

Employee Number 054102110 Pay Group NAC67
SSN XXX-XX-XXXX Location Lodi Skilled Nursing Serv
Job Cert Nursing Assistant Region NORTH - North
Pay Rate \$19.5000 Department NRADOD - Nursing - Aides/Orderlies
Pay Frequency Biweekly Facility 036 - Fairmont Rehab Hospital

Earnings

Pay Type	Hours	Pay Rate	Current	YTD
Regular Pay-Hourly	60.0800	\$19.5000	\$1,171.56	\$1,171.56
Overtime	1.5700	\$19.5000	\$30.62	\$30.62
Overtime Prem	1.5700	\$9.7500	\$15.31	\$15.31
CA PTO Time	8.0000	\$19.5000	\$156.00	\$156.00
Hero Pay			\$19.50	\$19.50

Total Hours 71.2200

Deductions

Deduction	Pre-Tax	Employee Current	Employee YTD	Employer Current	Employer YTD
No records found					

Taxes

Tax	Current	YTD
Employee Medicare	\$20.20	\$20.20
Social Security Employee Tax	\$86.37	\$86.37
CA State Income Tax	\$30.51	\$30.51
CA Disability Employee	\$15.32	\$15.32

Paid Time Off

Plan	Current	Balance
Paid Time Off	3.6695	14.2857

Net Pay Distribution

Account Number	Account Type	Amount
	Checking	\$1,240.59
Total		\$1,240.59

Pay Summary

	Gross	FIT Taxable Wages	Taxes	Deductions	Net Pay
Current	\$1,392.99	\$1,392.99	\$152.40	\$0.00	\$1,240.59
YTD	\$1,392.99	\$1,392.99	\$152.40	\$0.00	\$1,240.59

EXHIBIT 3

Pay Statement



Lodi Skilled Nursing Services, Inc.
950 S. Fairmont Avenue
Lodi, CA 95240
949-373-8364

Pay Statement

Period Start Date 11/01/2021
Period End Date 11/15/2021
Pay Date 11/24/2021
Document 96521
Net Pay **\$1,456.34**

Pay Details

ANGELICA GARDENAS
Employee Number 054102110 Pay Group NACS4
SSN XXX-XX-XXXX Location Lodi Skilled Nursing Serv
Job Cert Nursing Assistant Region NORTH - North
Pay Rate \$18.5000 Department NRADOD - Nursing - Aides/Orderlies
Pay Frequency Semi-Monthly Facility 036 - Fairmont Rehab Hospital

Earnings

Pay Type	Hours	Pay Rate	Current	YTD
Regular Pay-Hourly	74.5000	\$18.5000	\$1,378.25	\$9,322.51
Overtime	5.3200	\$18.5000	\$98.42	\$428.83
Covid Sick	0.0000	\$0.0000	\$0.00	\$592.00
Hero Pay			\$62.09	\$80.59
Meal Pay Prem	3.0000	\$18.5000	\$55.50	\$92.50
Overtime Prem	5.3200	\$9.2500	\$49.21	\$214.42
Training	0.0000	\$0.0000	\$0.00	\$9.25

Total Hours 88.1400

Deductions

Deduction	Pre-Tax	Employee Current	Employee YTD	Employer Current	Employer YTD
No records found					

Taxes

Tax	Current	YTD
Employee Medicare	\$23.83	\$155.73
Social Security Employee Tax	\$101.90	\$665.89
CA State Income Tax	\$41.68	\$220.74
CA Disability Employee	\$10.72	\$128.80

Paid Time Off

Plan	Taken	Current	Balance
Paid Time Off	0.0000	4.0156	27.1882

Net Pay Distribution

Account Number	Account Type	Amount
	Checking	\$1,456.34
Total		\$1,456.34

Pay Summary

	Gross	FIT Taxable Wages	Taxes	Deductions	Net Pay
Current	\$1,643.47	\$1,643.47	\$187.13	\$0.00	\$1,456.34
YTD	\$10,740.10	\$10,740.10	\$1,171.25	\$0.00	\$9,568.85

