

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 07 2022
By Rina Phillips Deputy
Rina Phillips

7 Attorneys for Plaintiff Lucretia Farrar, on behalf of herself and all "aggrieved employees" pursuant
8 to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

11 LUCRETIA FARRAR, on behalf of herself
12 and all "aggrieved employees" pursuant to
13 Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 ALLCARE MEDICAL MANAGEMENT,
17 INC., a California corporation, FAMILY
18 PLANNING ASSOCIATES MEDICAL
19 GROUP, INC., a California corporation, and
DOES 1 through 10, inclusive,

20 Defendants.

CASE NO: **CIV SB 2219370**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 212, 221, 226(a), 226.7, 227.3,
510, 512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§
225.5, 226.3, 246, AND 558**

COPY SCANNED

1 Plaintiff LUCRETIA FARRAR ("Plaintiff"), on behalf of herself and others as an "aggrieved
2 employee" under the Labor Code Private Attorneys General Act of 2004, complains of ALLCARE
3 MEDICAL MANAGEMENT, INC., a California corporation, FAMILY PLANNING ASSOCIATES
4 MEDICAL GROUP, INC., a California corporation, and/or any subsidiaries or affiliated companies
5 (hereinafter referred to as "Defendants"), as follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
9 Plaintiff and other non-exempt California employees who currently work or formerly worked for
10 Defendants ("Aggrieved Employees").

11 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
12 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
13 Labor Code § 2698 *et seq.*, and continuing to the present (the "liability period"), Defendants have had
14 consistent policies of:

15 a. Failing to pay Plaintiff and other Aggrieved Employees all minimum and
16 overtime wages due during the course of employment, in violation of Labor Code §§ 510,
17 558, and 1194. Defendants rounded down the hours reflected on Plaintiff's and other
18 Aggrieved Employees' time records to pay fewer hours than were actually worked. On a
19 weekly basis, this rounding deprived Plaintiff and other Aggrieved Employees of significant
20 hours worked. These failures to pay all minimum and overtime wages due constitute violations
21 of Labor Code §§ 510, 558, and 1194.;

22 b. Failing to offer Plaintiff and other Aggrieved Employees a method for them to
23 receive their wages "in cash, on demand," in violation of Labor Code § 212. Plaintiff and
24 other Aggrieved Employees were paid wages via gift cards, not redeemable for cash, which
25 violates the express requirements Labor Code § 212. Labor Code § 212 requires that "No
26 person...shall issue in payment of wages due" of any "acknowledgment of indebtedness,
27 unless it is negotiable and payable in cash, on demand." Labor Code § 225.5 provides for
28 penalties resulting from Labor Code § 212 violations, stating "every person who unlawfully

1 withholds wages due any employee in violation of Section 212.” The gift cards issued to
2 Plaintiff and other Aggrieved Employees violate the payment requirements of Labor Code §§
3 212 and 225.5;

4 c. Failing to properly compute certain bonuses earned by Plaintiff and other
5 Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest
6 period premiums, overtime wages, and sick pay at the correct rates, in violation of Labor Code
7 §§ 246(d), 226.7, 510, 512, 558 and 1194 and IWC Wage Order No. 4-2001. Defendants failed
8 to properly blend bonuses into the regular rate of pay and instead paid Plaintiff and other
9 Aggrieved Employees meal period premiums, rest period premiums, overtime wages, and sick
10 pay based only on the base hourly rate of pay, thus depriving Plaintiff and other Aggrieved
11 Employees of all meal and rest period premiums, overtime wages, and sick pay earned. This
12 violates Labor Code §§ 246(d), 226.7, 510, 512, 558 and 1194 and IWC Wage Order No. 4-
13 2001;

14 d. Failing to pay correct premium wages at to Plaintiff and other Aggrieved
15 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
16 Order No. 4-2001. Plaintiff and other Aggrieved Employees were routinely unable to take a
17 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not
18 paid premium wages of one hour’s pay for each missed rest period. Plaintiff was simply denied
19 and not authorized to take her legally entitled rest periods and was never paid premium wages
20 at the proper rate of pay for missed rest periods. Furthermore, when Plaintiff and other
21 Aggrieved Employees were able to take a rest period, they were impermissibly required to
22 remain on the company premises. This violates Labor Code § 226.7 and IWC Wage Order
23 No. 4-2001;

24 e. Failing to pay correct premium wages to Plaintiff and other Aggrieved
25 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
26 and 558 and IWC Wage Order 4-2001. Plaintiff and other Aggrieved Employees were
27 routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period
28

1 for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute
2 meal period for every shift worked that exceeded ten hours, but were not paid premium wages
3 of one hour's pay at the proper rate of pay for each missed first or second meal period. When
4 they did receive a meal period, it was typically provided after the fifth hour of work. This
5 violates Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001;

6 f. Making improper deductions from Plaintiff's and other Aggrieved Employees'
7 wages. Labor Code § 221 provides that "[i]t shall be unlawful for any employer to collect or
8 receive from an employee any part of wages theretofore paid by said employer to said
9 employee." Defendants have violated Labor Code § 221 (together with Labor Code § 510,
10 558 and 1194) because they improperly deducted fees for re-issued payroll checks and other
11 charges from Plaintiff and other Aggrieved Employees. No legally permissible authorization
12 was made for these deductions. Plaintiff and other Aggrieved Employees are entitled to civil
13 penalties as a result;

14 g. Failing to provide Plaintiff and other Aggrieved Employees with wage
15 statements that fully and accurately itemized the requirements set forth in Labor Code §
16 226(a). Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above.
17 As such, the wage statements provided by Defendants failed to accurately state all gross wages
18 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of
19 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
20 and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and
22 226.3; and

23 h. Failing to pay Plaintiff and other Aggrieved Employees all wages due at the
24 separation of their employment based on the time frames required by Labor Code §§ 201 and
25 202. As stated above, Plaintiff and other Aggrieved Employees were not paid all wages due
26 during the course of their employment and, as a result of this failure, they were not timely
27
28

1 paid all wages due at the separation of their employment. Furthermore, when Plaintiff resigned
2 from her employment, she was not issued her final wages within 72 hours of her resignation—
3 instead, she was issued her final wages many days later. Additionally, when Plaintiff resigned
4 her employment, she was not timely issued all of her accrued, but unused PTO and/or vacation
5 wages upon her separation of employment. Plaintiff alleges that Defendants maintain a policy
6 to untimely pay final wages to its former employees. This violates Labor Code §§ 201-202
7 and 227.3 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no longer
8 employed by Defendants.

9
10 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
11 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

12 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
13 The Labor Code violations alleged against Defendants herein arose in San Bernardino County,
14 California.

15 II.

16 PARTIES

17 A. Plaintiff

18 5. Plaintiff LUCRETIA FARRAR was employed by Defendants from June 2021 through
19 March 2022 as a non-exempt employee in San Bernardino County, California.

20 B. Defendant

21 6. Defendant ALLCARE MEDICAL MANAGEMENT, INC. is a California corporation
22 that employed Plaintiff and Aggrieved Employees throughout the State of California, including San
23 Bernardino County, California.

24 7. Defendant FAMILY PLANNING ASSOCIATES MEDICAL GROUP, INC. is a
25 California corporation that employed Plaintiff and Aggrieved Employees throughout the State of
26 California, including San Bernardino County, California.

27 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
28 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is

1 informed and believes, and based thereon alleges, that each of the Defendants designated herein as
2 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
3 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
4 designated hereinafter as DOES when such identities become known.

5 9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
6 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
7 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
8 attributable to the other Defendants.

9 10. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
10 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
11 provisions of the California Labor Code as alleged herein.

12 IV.

13 CAUSES OF ACTION

14 FIRST CAUSE OF ACTION

15 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS 16 CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF 17 LABOR CODE §§ 201, 202, 212, 221, 226(a), 226.7, 227.3, 510, 512, AND 1194 AND 18 PURSUANT TO LABOR CODE § 2699(a)

19 FOR VIOLATIONS OF LABOR CODE §§ 225.5, 226.3, 246, AND 558

20 11. Plaintiff incorporates paragraphs 1 through 10 of this Complaint as though fully set
21 forth herein.

22 12. As a result of the acts alleged above, including the Labor Code violations set forth in
23 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

24 13. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
25 civil penalties subject to the following formula:

- 26 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
27 each subsequent violation of Labor Code §§ 201, 202, 212, 221, 226(a), 226.7,
28 227.3, 510, 512, and 1194; and

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 225.5, 226.3, 246, and 558.

14. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

15. On June 30, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of June 30, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: September 6, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Evan S. Gaines
EVAN S. GAINES
Attorneys for Plaintiff