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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA
11 UNLIMITED JURISDICTION
12

13 KIKISHIA BURRUS, on behalf of herself and
14 all others similarly situated, and the general
public,

15 *Plaintiff,*

16 v.

17 THE ELEVANCE HEALTH COMPANIES,
18 INC., an Indiana corporation; ELEVANCE
HEALTH, INC., an Indiana corporation; and
19 DOES 1 through 50, inclusive,

20 *Defendants.*
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Case No.

REPRESENTATIVE ACTION

COMPLAINT 22CV407773

1. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff KIKISHIA BURRUS ("Plaintiff"), on behalf of herself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against defendants THE ELEVANCE
5 HEALTH COMPANIES, INC., an Indiana corporation; ELEVANCE HEALTH, INC., an Indiana
6 corporation; and DOES 1 through 50, inclusive, (collectively referred to as "Defendants") for
7 alleged violations of the Labor Code. As set forth below, Plaintiff alleges that Defendants have

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to pay them overtime wages at the correct rate;
- 16 (7) failed to pay them double time wages at the correct rate;
- 17 (8) failed to pay them overtime and/or double time wages by failing to include all
18 applicable remuneration in calculating the regular rate of pay;
- 19 (9) failed to reimburse them for all necessary business expenses;
- 20 (10) unlawfully deducted, received, and/or withheld wages, secretly paying wages below
21 scale;
- 22 (11) failed to provide them with accurate written wage statements; and
- 23 (12) failed to pay them all of their final wages following separation of employment.

24 Based on these alleged violations, Plaintiff now brings this representative action to recover civil
25 penalties, and related relief on behalf of herself and all others similarly situated, all other aggrieved
26 employees, and the State of California.

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1 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
2 and scope of such relationship and with the full knowledge, consent, and ratification by such other
3 defendants.

4 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 9. Plaintiff worked for Defendants as a Referral Specialist in an hourly, non-exempt
6 position from approximately 2008 through January 31, 2022.

7 **Clock In Process**

8 10. Plaintiff and the putative class were trained to clock in for each work shift using the
9 computer and/or company phone issued to them. Plaintiff and the putative class were regularly
10 required to first turn on their computer and wait for it to load. After Plaintiff and the putative class
11 entered their log in information, their computer and/or phone would proceed to load to the desktop
12 and/or home screen as part of the normal boot up process. It generally took approximately five
13 minutes for it to boot up, for putative class members to log in, and for putative class members to get
14 “clocked in” so that they would begin being compensated.

15 11. Occasionally, Plaintiff and the putative class would encounter login errors or crashes
16 that would require them to restart the entire boot up process and/or reach out to technical support
17 with their personal phones. The entire time spent booting up the computer would not be accurately
18 recorded and therefore resulted in Plaintiff and the putative class not being paid for all hours
19 worked while waiting for the computer the boot up.

20 12. Boot up time was not properly recorded as time worked and resulted in Plaintiff and
21 the putative class not being paid for all hours worked by Defendants.

22 **Clocking Out/Off-the-Clock**

23 13. Plaintiff and the putative class would be required to perform off-the-clock work on
24 multiple occasions after they had clocked out for their shift. For example, Plaintiff and the putative
25 class would receive text messages and/or phone calls from management after they had already
26 clocked out for their shift.

27 14. Defendants knew or should have known that Plaintiff and the putative class were not
28 “on the clock” after they had clocked out and therefore should not have directed Plaintiff and the

1 putative class to review and/or respond to management communications or perform any additional
2 work once they had clocked out.

3 15. The time spent by Plaintiff and the putative class reviewing and/or responding to
4 management communications could be anywhere from two to ten minutes—time which was unpaid
5 by Defendants.

6 **Missed Meal Periods**

7 16. Plaintiff and the putative class were not provided with meal periods of at least thirty
8 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of scheduling each
9 meal period at the end of the fifth hour as part of each work shift; (2) chronically understaffing
10 each work shift with not enough workers; (3) imposing so much work on each employee such that
11 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
12 work on time; and (4) no formal written meal and rest period policy that encouraged employees to
13 take their meal and rest periods.

14 17. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
15 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
16 worked due to Defendant's scheduling a meal period at the end of the fifth hour and Defendants'
17 productivity requirements instructing them to attend to each call thoroughly until completion.

18 18. On instances when Plaintiff and the putative class members' meal periods were
19 missed, late and/or shortened due to Defendants' policies and/or practices, Defendants
20 systematically failed to pay Plaintiff and the putative class premium wages.

21 **Missed Rest Breaks**

22 19. Plaintiff and the putative class were not provided with rest breaks of at least ten (10)
23 minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
24 chronically understaffing each work shift with not enough workers; (2) imposing so much work on
25 each employee such that it made it unlikely that an employee would be able to take their breaks if
26 they wanted to finish their work on time; and (3) no formal written meal and rest period policy that
27 encouraged employees to take their meal and rest breaks.

28 20. As a result of Defendants' policy, Plaintiff and the putative class were regularly not

1 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
2 due to complying with Defendants' productivity requirements that required Plaintiff and the
3 putative class to work through their rest periods in order to complete their assignments on time.

4 21. On instances when Plaintiff and the putative class members' rest breaks were
5 missed, late and/or shortened due to Defendants' policies and/or practices, Defendants
6 systematically failed to pay Plaintiff and the putative class premium wages.

7 **Regular Rate of Pay**

8 22. The regular rate of pay under California law includes all remuneration for
9 employment paid, on behalf of the employer, to the employee. This requirement includes, but is
10 not limited to, flex credits, quarterly performance bonuses and/or non-discretionary bonuses.

11 23. During the applicable limitations period, Defendants violated the rights of Plaintiff
12 and the putative class under the above-referenced Labor Code sections by failing to pay them
13 overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and 1198
14 as a result of not correctly calculating their regular rate of pay to include all applicable
15 remuneration, including, but not limited to flex credits, quarterly performance bonuses and/or non-
16 discretionary bonuses.

17 **Expense Reimbursement**

18 24. Plaintiff and the putative class members worked remotely in a home office and
19 telecommuted as part of their job for Defendants. Plaintiff was already working remotely when the
20 pandemic unfolded. In response to the COVID-19 crisis, Defendants closed their office space to
21 Plaintiff and the putative class members, requiring that they work from home.

22 25. Plaintiff and the putative class members were provided with a monitor, laptop,
23 keyboard, phone, and modem to allow them to execute their job duties during the relevant time
24 period.

25 26. Plaintiff and the putative class had to set up a desk and office space in their homes in
26 order to have a place to execute their job duties with Defendants' equipment.

27 27. Plaintiff and the putative class members were not reimbursed for business expenses
28 incurred in telecommuting as a part of their job including but not limited to, wifi expenses,

1 electricity expenses, the expenses of required personal cell phone usage, and/or rent expenses for
2 the physical office space they were required to keep in their home.

3 28. Defendants failed to reimburse Plaintiff and the putative class for such necessary
4 business expenses incurred by them.

5 **Wage Statements**

6 29. Plaintiff and the putative class were not provided with accurate wage statements as
7 mandated by law pursuant to Labor Code § 226.

8 30. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
9 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
10 clock” work were not included.

11 31. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
12 worked by the employee” were not accurately reflected in that all hours worked, including overtime
13 and “off-the-clock” work were not included.

14 32. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions”
15 were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not
16 included.

17 33. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
18 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
19 clock” work were not included.

20 34. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee” were not accurately reflected in that all hours worked, including
23 overtime and “off-the-clock” work were not included.

24 **FIRST CAUSE OF ACTION**

25 **CIVIL PENALTIES**

26 **(Lab. Code §§ 2698 *et seq.*)**

27 35. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

28 36. During the applicable limitations period, Defendants have violated Labor Code §§

1 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

2 37. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
3 herself and other current and former employees, to bring a representative civil action to recover
4 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
5 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

6 38. Plaintiff, a former employee against whom Defendants committed one or more of the
7 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
8 within the meaning of Labor Code § 2699(c).

9 39. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
10 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
11 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
12 intent to investigate.

13 40. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
14 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
15 227.3, 510, 512, 1194, 1197, 1198 and 2802:

16 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198
17 and 2802, one hundred dollars (\$100) for each employee per pay period for
18 each initial violation and two hundred dollars (\$200) for each employee per
19 pay period for each subsequent violation (penalties set by Labor Code §
20 2699(f)(2));

21 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
22 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);

23 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
24 employee for each initial violation that was neither willful nor intentional,
25 two hundred dollars (\$200) for each employee, plus 25% of the amount
26 unlawfully withheld from each employee, for each initial violation that was
27 either willful or intentional, and two hundred dollars (\$200) for each
28 employee, plus twenty-five percent (25%) of the amount unlawfully withheld

1 from each employee, for each subsequent violation, regardless of whether the
2 subsequent violation was either willful or intentional (penalties set by Labor
3 Code § 210);

4 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
5 employee for each initial violation that was neither willful nor intentional,
6 two hundred dollars (\$200) for each employee, plus twenty-five percent
7 (25%) of the amount unlawfully withheld from each employee, for each
8 initial violation that was either willful or intentional, and two hundred dollars
9 (\$200) for each employee, plus twenty-five percent (25%) of the amount
10 unlawfully withheld from each employee, for each subsequent violation,
11 regardless of whether the subsequent violation was either willful or
12 intentional (penalties set by Labor Code § 225.5);

13 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
14 citation, two hundred and fifty dollars (\$250) for each employee for each
15 violation. Alternatively, if an initial citation or its equivalent occurred before
16 the filing of this action, one thousand dollars (\$1,000) for each employee for
17 each violation (penalties set by Labor Code § 226.3);

18 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
19 employee for each initial pay period for which the employee was underpaid,
20 and one hundred dollars (\$100) for each employee for each subsequent pay
21 period for which the employee was underpaid (penalties set by Labor Code §
22 558);

23 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
24 aggrieved employee for each initial violation of Labor Code § 1197 that was
25 intentional and two hundred and fifty dollars (\$250) for each aggrieved
26 employee per pay period for each subsequent violation of Labor Code §
27 1197, regardless of whether the initial violation was intentional (penalties set
28 by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

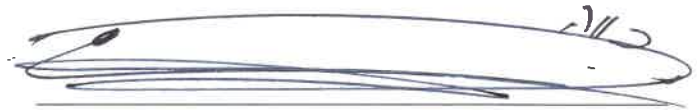
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) Pre-judgment interest;
- (2) Civil penalties;
- (3) Costs of suit;
- (4) Reasonable attorneys' fees; and
- (5) Such other relief as the Court deems just and proper.

Dated: November 21, 2022

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