

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/12/2022 at 03:57:11 AM

Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

1
2 TRAVIS J. BURCH (SBN 216175)
3 ALI SHALCHI (SBN 239164)
4 Email: tb@shalchiburchllp.com
5 Email: as@shalchiburchllp.com
6 SHALCHI BURCH LLP
7 23 Corporate Plaza Dr., Suite 150
8 Newport Beach, California 92660
9 Telephone: (949) 359-0334

10 Attorneys for Plaintiff,
11 MICHELLE DRAKE

12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SAN DIEGO**

14 MICHELLE DRAKE, on behalf of the State of
15 California and Aggrieved Employees, as a private
16 attorney general,

17 Plaintiff,

18 vs.

19 SAN DIEGO CENTER FOR CHILDREN, a
20 California Non-Profit Corporation;

21 Defendant.

Case No.: 37-2022-00040815-CU-OE-CTL

COMPLAINT FOR:

1. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
("PAGA") – LABOR CODE
SECTION 2698 *ET SEQ.* FOR
VIOLATIONS OF LABOR CODE
SECTIONS 201, 202, 203, 204, 207,
208, 213, 218, 219, 226(a)-(c), 226.7,
432.5, 510, 512(a), 558, 558.1, 1174(d),
1194, 1198, 1198.5, 1199, 2800, 2802

1 Plaintiff Michelle Drake, on behalf of the State of California as an aggrieved employee
2 pursuant to Labor Code Section 2698 et seq. ("PAGA") alleges against Defendant San Diego
3 Center For Children ("Defendant" or "SDCFC") as follows:

4
5 **THE PARTIES**

6 1. Plaintiff Michelle Drake is, and at all relevant times was, an "aggrieved employee"
7 as that term is defined in California Labor Code Section 2699, subdivision (c).

8 2. Plaintiff is informed and believes, and based upon that information and belief,
9 alleges that Defendant San Diego Center For Children is a California Non-Profit Corporation doing
10 business in California and with headquarters at 3002 Armstrong Street, San Diego, California.
11 Defendant SDCFC has aggrieved employees in the County of San Diego in this judicial district.

12 3. Defendant has sufficient contacts with California or otherwise purposefully avail
13 itself of the benefits in the State, so as to render the exercise of jurisdiction over it by a California
14 Court consistent with traditional notions of fair play and substantial justice.

15 4. Venue is proper in this Court because Defendant transacts business throughout
16 California including in San Diego, California. At all relevant times, aggrieved employees worked
17 in San Diego County and suffered PAGA violations therein.

18 **PAGA EXHAUSTION**

19 5. Plaintiff met all jurisdictional requirements in order to exhaust administrative
20 remedies prior to filing her PAGA claim.

21 6. Specifically, she electronically filed a PAGA Notice of her claims and theories of
22 Labor Code violations with the Labor and Workforce Development Agency ("LWDA") at least 65
23 days prior to filing the instant action. Additionally, she sent the PAGA Notice via certified mail
24 to the Defendant.

25 7. Plaintiff provided her PAGA Notice on or about August 1, 2022. The LWDA
26 expressed no interest in investigating the matter. Plaintiff seeks PAGA remedies on behalf of all
27 exempt or non-exempt employees of Defendant that were subjected to at least the following Labor
28 Code violations: Labor Code Sections 201, 202, 203, 204, 207, 208, 213, 218, 219, 226(a)-(c),
226.7, 432.5, 510, 512(a), 558, 558.1, 1174(d), 1194, 1198, 1199, 2800, 2802.

1 **GENERAL ALLEGATIONS**

2 8. Plaintiff worked for Defendant at all relevant times. Throughout her employment,
3 Plaintiff suffered sundry Labor Code violations and was an aggrieved employee as defined by the
4 PAGA statutory scheme.

5 9. Labor Code Section 1194(a) provides that notwithstanding any agreement to work
6 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
7 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
8 of the full amount of this minimum wage or overtime compensation, including interest thereon,
9 reasonable attorneys' fees, and costs of suit.

10 10. California law requires employers to pay hourly employees for "all hours worked,"
11 which includes all time that an employee is under the control of the employer and all times the
12 employee is suffered and permitted to work. This includes the time an employee spends, either
13 directly or indirectly, performing services which inure to the benefit of the employer.

14 11. Labor Code Section 1194 and 1197 require an employer to compensate employees
15 for all "hours worked" at least the minimum wage rate of pay as established by the IWC Wage
16 Orders.

17 12. Defendant failed to pay Plaintiff and other aggrieved employees for "all hours"
18 worked at the minimum wage or proper regular rate of pay because some aggrieved employees
19 were working off the clock numerous times throughout the workday. Aggrieved employees were
20 required to park on the Defendant's campus, then walk to the nurse's station to have their
21 temperature taken before then walking to their workstation and booting up their computer and
22 only then clocking in. Additionally, many non-exempt employees were working through meal
23 and rest breaks without proper compensation.

24 13. Labor Code Section 510 and 1194 and the Wage Orders require employers to
25 compensate employees at a higher rate of pay for hours worked in excess of eight (8) hours in a
26 workday, more than forty (40) hours in a workweek, and on any seventh consecutive day of work
27 in a workweek:

28 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

1 compensated at the rate of no less than one and one-half times the
2 regular rate of pay for an employee. Any work in excess of 12 hours
3 in one day shall be compensated at the rate of no less than twice the
4 regular rate of pay for an employee. In addition, any work in excess
5 of eight hours on any seventh day of a workweek shall be
6 compensated at the rate of no less than twice the regular rate of pay
7 of an employee.

8 14. Defendant knew or should have known that Plaintiff and aggrieved employees
9 worked over eight hours in a day or over forty hours in a week, or both, without overtime
10 compensation. However, at all relevant times, Defendant failed to pay overtime wages to Plaintiff
11 and the aggrieved employees for hours worked over eight hours in a day. As set forth above, many
12 employees were not paid for all hours worked because of the off-the-clock work that was not
13 factored into the aggrieved employees' compensable time.

14 15. Labor Code Section 512 and the relevant Wage Order(s) require an employer to
15 authorize or permit an uninterrupted meal period of no less than thirty (30) minutes before the sixth
16 hour of work and a second meal period no later than the employee's tenth hour of work. If the
17 employee is not relieved of all duties during a meal period, the meal period is an on-duty meal
18 period and counted as time worked. A paid on-duty meal period is only permitted when (1) the
19 nature of the work prevents an employee from being relieved of all duty and (2) the parties have a
20 written agreement agreeing to on-duty meal periods. If the employee is not free to leave the work
21 premises or worksite during the meal period, even if the employee is relieved of all other duty
22 during the meal period, the employee is subject to the employer's control and the meal period is
23 counted as time worked. If an employer fails to provide an employee a meal period in accordance
24 with the law, the employer must pay the employee one (1) hour of pay at the employee's regular
25 rate of pay for each workday that a legally required and compliant meal period was not provided.
26 Labor Code Section 226.7 and the relevant Wage Orders.

27 16. Defendant violated Plaintiff and the aggrieved employees' right to take duty free
28 meal breaks before the sixth hour of work. Plaintiff and the aggrieved employee were deprived of
meal breaks or had to work through the meal break period. Defendant further violated Labor Code
Sections 512, 226.7 and the relevant Wage Order by failing to pay premium pay for missed or non-
compliant meal breaks.

1 17. Labor Code Section 226.7 and the relevant Wage Order(s) require every employer
2 to authorize and permit an employee a rest period of ten (10) minutes for every four (4) hours
3 worked or major fraction thereof. If the employer fails to authorize or permit a required rest period,
4 the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for
5 each workday the employer did not authorize or permit a legally required rest period.

6 18. Defendant violated Section 226.7 and the Wage Order(s) because Plaintiff and the
7 aggrieved employees were not provided with rest breaks. Defendants further violated Section 226.7
8 and the Wage Order(s) by failing to properly pay Plaintiff and the aggrieved employees their
9 premium pay for missed rest breaks.

10 19. Labor Code Section 2802 states that: "[a]n employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties, or of his or her obedience to the directions of the employer . .
13 .“ An employer is prohibited from passing the ordinary business expenses and losses of the
14 employer onto the employee.

15 20. Defendant violated Labor Code Section 2800 and 2802 by requiring Plaintiff and
16 the aggrieved employees to use their personal cellphones for work. Additionally, some aggrieved
17 employees worked remotely, and Defendant never reimbursed the aggrieved employees for Wi-Fi,
18 and/or internet usage, home office supplies, or increased energy consumption for use of their home
19 utilities.

20 21. Labor Code Section 226(a) provides, *inter alia*, that upon paying an employee his
21 or her wages, the employer must “furnish each his or her employees . . . an itemized wage statement
22 in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any
23 employee whose compensation is solely based on a salary and who is exempt from payment of
24 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
25 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
27 written orders of the employee and his or her social security number, (8) the name and address of
28 the legal entity that is the employer, and all (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate by the employee.”

1 22. Defendant violated Plaintiff and the aggrieved employees' rights under Labor Code
2 Section 226 because the wage statements did not have an accurate rendering of the hours worked
3 or the correct overtime amount. The wage statements did not contain missed meal or rest break
4 premium pay.

5 23. Labor Code Section 1174 and 1174.5 and the relevant Wage Order(s) require
6 employers to maintain accurate and complete payroll records showing the beginning and end of
7 each work period and meal period and total hours worked. They must be kept in the state and at
8 the plant or establishment the employees are employed.

9 24. Defendant violated Plaintiff and the aggrieved employees' rights under Section
10 1774, 1174.5 and the Wage Orders because their time was inaccurate as to all the hours worked
11 and the clock in times.

12 25. Labor Code Section 204 requires employers to pay wages twice during each
13 calendar month on days designated in advance as regular paydays, subject to certain exceptions.
14 Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between
15 the 16th and the 26th day of that month and wages earned between the 16th and the last day,
16 inclusive, of any calendar month must be paid between the 1st and 10th day of the following month.
17 Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
18 seven (7) calendar days following the close of the payroll period in which wages were earned.

19 26. Defendant failed to pay Plaintiff and the aggrieved employees timely during their
20 employment. Defendant failed to pay aggrieved employees their full and complete wages,
21 including overtime and missed meal and rest premium pay and off-the-clock work.

22 27. Labor Code Section 201, 202, and 203 require employers to pay employees with
23 their final wages immediately upon termination and within seventy-two (72) hours of resignation.

24 28. Defendant violated Labor Code Section 201, 202, and 203 by failing to pay Plaintiff
25 and the aggrieved employees their final wages in a timely fashion. Defendant failed to pay
26 aggrieved employees their full and complete wages, including overtime and missed meal and rest
premium pay and off the clock pay.

27 29. Labor Code Section 208 requires that employers pay every employee who is
28 discharged, at the place of discharge, and every employee who quits shall be paid at the office or

1 agency of the employer in the county where the employer was working. Plaintiff and other
2 aggrieved employees did not receive their last paycheck at Defendants' offices where Plaintiff and
3 other aggrieved employees were working.

4 30. Labor Code Section 207 requires every employer to conspicuously at the place of
5 work, a notice specifying the regular pay days and time and place of payment. Defendant violated
6 Section 207 because they failed to place such notice where the aggrieved employees could see such
7 notice.

8 31. Labor Code Section 213 authorizes employers to deposit an employee's wages in a
9 bank account of the employee's choosing according to the employee's authorization. The
10 Defendants violated Section 213 by not allowing aggrieved employees a choice to have a paper
11 check.

12 32. Labor Code Section 558 subjects any employer or other person acting on behalf of
13 an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor
14 Code or any provision regulating hours and days of work in any IWC Wage Order to a civil
15 penalty in the amount of \$50 for any initial violation for each pay period in which an employee is
16 underpaid in addition to an amount sufficient to recover underpaid wages and \$100 for each
17 subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall
18 be paid to each affected employee.

19 33. Labor Code Section 558.1(a) states that any employer or other person acting on
20 behalf of an employer who violates or causes to be violated, any provision regulating minimum
21 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
22 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
23 Employer for such violation. Labor Code Section 558.1 expressly defines "employer or other
24 person acting on behalf of an employer to include a natural person who is an owner, director,
25 officer, or managing agent of the employer.

26 34. Labor Code Section 1197.1 states that any employer or other person acting either
27 individually or as an officer, agent, or employee of another person, which pays or causes to be paid
28 to any employee a wage less than the minimum fixed by an order of the commission shall be
subject to a civil penalty and restitution of wages payable to the employee in the amount of \$100

1 for the initial violation for each pay period in which an employee was underpaid in addition to an
2 amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition
3 to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

4 35. Defendant violated Sections 558, 558.1 and 1197.1 by underpaying aggrieved
5 employees and by failing to pay them all compensation that was due and owing to them and failing
6 to issue them premium pay for rest break violations under Labor Code Section 203, 226, 226.7,
7 1194 and the relevant Wage Orders.

8 36. Labor Code Section 219 (a) prohibits employers from attempting to circumvent the
9 payment of full wages and other obligations imposed under Article 1 (Lab. Code Section 200-244)
10 through any contract, whether written, oral or implied. Labor Code Section 432.5 prohibits every
11 employer, or agent, manager, superintendent, or officer thereof, from requiring any employee or
12 applicant for employment to agree in writing to any term or condition known to be prohibited.

13 37. Here, Defendant violated Sections 219 and 432.5 because it compelled aggrieved
14 employees to execute illegal and void meal break waivers that it knew or should have known were
15 unenforceable.

16 **FIRST CAUSE OF ACTION**

17 **(Violation of Labor Code Section 2698, *et seq.* California Private Attorneys General**

18 **Act – “PAGA”)**

19 **(Against Defendant)**

20 38. Plaintiff hereby incorporates by reference the allegations in the above paragraphs
21 of this Complaint as though fully set forth herein.

22 39. PAGA permits an “aggrieved employee” to bring a civil action on behalf of him or
23 herself and on behalf of all other aggrieved employees to recover civil penalties for an employer’s
24 violation of sections enumerated in Labor Code Section 2699.5 and 2699.3. An “aggrieved
25 employee” is defined in Labor Code Section 2699, subdivision (c), as “any person who was
26 employed by the alleged violator and against whom one or more of the alleged violations was
27 committed.”
28

1 40. Plaintiff and other aggrieved employees are “aggrieved employees” as defined by
2 Labor Code Section 2699, subdivision (c) because they are all current or former employees of
3 Defendant and were subject to Defendant’s violations of various labor code sections.

4 41. Plaintiff satisfied the requirements of Labor Code Section 2699.3 (a)(1)(A) and
5 (a)(1)(B). Additionally, the LWDA provided no notice it was investigating the violation within
6 65 days of the postmark date of the notice provided in Section 2699.3 (a)(1)(A).

7 42. Plaintiff and other aggrieved employees were subject to violations of the following
8 Labor Code Sections, entitling them to penalties under PAGA: Labor Code Sections 201, 202,
9 203, 204, 207, 208, 213, 218, 219, 226(a)-(c), 226.7, 432.5, 510, 512(a), 558, 558.1, 1174(d),
10 1194, 1198.5, 1199, 2800/2802. In particular, Defendant’s unlawful policies, practices, and
11 procedures comprising the violations include:

12 a. Defendant failed to pay Plaintiff and aggrieved employees all wages due
13 and owing for all time worked, including minimum wages and overtime in violation of Labor Code
14 Sections 510, 218, 1194, 1197.1, 1198, 1199, and applicable Wage Orders;

15 b. Defendant failed to provide Plaintiff and aggrieved employees with
16 compliant duty-free meal breaks before the end of the fifth hour and duty-free rest breaks for at
17 least ten minutes for every four hours of work in violation of Labor Code Sections 226.7, 512,
18 1198 and the relevant IWC Wage Orders and the premium penalty wage did not properly use the
19 regular rate of pay;

20 c. Defendant failed to provide Plaintiff and aggrieved employees with accurate
21 itemized wage statements under Labor Code Section 226(a) and 1198 and the relevant IWC Wage
22 Orders;

23 d. Defendant failed to maintain accurate and complete employment records
24 showing all hours worked daily by Plaintiff and aggrieved employees in violation of Labor Code
25 Section 1174 and 1174.5 and the relevant Wage Orders;

26 e. Defendant failed to timely pay Plaintiff and aggrieved employees with full
27 wages during and upon termination of employment in violation of 201, 202, 203, and 204;
28

1 f. Defendant failed to conspicuously post the dates and location of pay for
2 Plaintiff and aggrieved employees in violation of Labor Code Section 207;

3 g. Defendant failed to pay final pay to Plaintiff and aggrieved employees at
4 the proper location and time in violation of Labor Code Section 208;

5 h. Defendant failed to give aggrieved employees a choice to have direct
6 deposit of their wages or paper checks in violation of Labor Code Section 213;

7 i. Defendant violated Labor Code Sections 219 and 432.5 by compelling
8 aggrieved employees to enter into prohibited meal breaks waivers;

9 j. Defendant failed to reimburse aggrieved employees for all business
10 expenses in violation of Labor Code Sections 2800/2802;

11 k. Defendant violated Labor Code Sections 558, 558.1, and 1197.1 by failing
12 to pay the aggrieved employees for all wages, and for violating Sections 203, 226, 226.7, 1194,
13 and 2802 of the Labor Code.

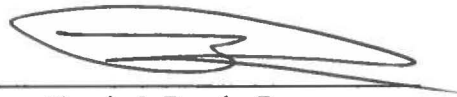
14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 16 1. For all penalties permitted under the California Labor Code Section 2699 (f);
17 2. For attorney's fees under at least the following statutes: Labor Code 2699 (g); and
18 Code of Civil Procedure Section 1021.5;
19 3. For the costs of the suit herein;
20 4. For such other and further relief as this Court may deem just and proper

21 DATED: October 11, 2022

SHALCHI BURCH LLP

22
23 By: 

Travis J. Burch, Esq.
Attorneys for Plaintiff Michelle Drake