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Attorneys for Plaintiff Mercedes Cervantes, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

MERCEDES CERVANTES, on behalf of
herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

PLAN-IT LIFE, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: **CVRI2205519**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 510, 512, 1194,
AND 2802 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

1 Plaintiff MERCEDES CERVANTES (“Plaintiff”), on behalf of herself and others as an
2 “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, codified as
3 Labor Code §§ 2698 *et seq.*, complains of PLAN-IT LIFE, INC., a California corporation, and/or any
4 subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

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

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

14 a. Failing to pay Plaintiff and other Aggrieved Employees all overtime and
15 double-time wages earned, in violation of Labor Code §§ 510, 558, and 1194. Plaintiff and Aggrieved
16 Employees were required to work overtime and double-time hours, but were not paid proper premium
17 overtime wages of one-and-one-half times the regular rate of pay for all hours worked in excess of
18 eight in a workday and forty in a workweek and proper premium double-time wages for all hours
19 worked in excess of twelve in a workday. Defendants simply substantially underpaid Plaintiff and
20 other Aggrieved Employees the applicable overtime and double-time wages due. These failures to
21 pay all overtime and double-time wages at the proper rates of pay constitute violations of Labor Code
22 §§ 510, 558, and 1194;

23 b. Failing to pay to Plaintiff and other Aggrieved Employees all minimum and
24 overtime wages earned during the course of employment, in violation of Labor Code §§ 510, 558,
25 and 1194. Plaintiff and other Aggrieved Employees routinely worked off-the-clock, without
26 compensation: they were not paid for time spent (1) assisting other employees with their work tasks
27 before clocking in for their shifts; (2) post-work “charting”; (3) answering work-related calls and text
28 messages outside of their scheduled shifts; (4) attending orientation and other training; and (5) other

1 post-shift activities, such as helping other employees with their work tasks or performing maintenance
2 work. This violates Labor Code §§ 510, 558, and 1194;

3 c. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
4 were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.
5 Plaintiff and Aggrieved Employees were routinely unable to take a 10-minute rest period for every
6 four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay
7 for each missed rest period. Plaintiff was simply denied and not authorized to take her legally entitled
8 rest periods and was never paid premium wages for missed rest periods. Plaintiff and Aggrieved
9 Employees were also impermissibly required to remain on the company premises, under Defendants'
10 control, during any rest periods, rendering them impermissibly on-duty. This violates Labor Code §
11 226.7 and IWC Wage Order No. 5-2001;

12 d. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
13 were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage
14 Order 5-2001. Plaintiff and other Aggrieved Employees were routinely denied, and not authorized to
15 take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours,
16 or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten
17 hours, but were not paid premium wages of one hour's pay for each missed first or second meal
18 period. Plaintiff and Aggrieved Employees were also impermissibly required to remain on the
19 company premises, under Defendants' control, during their meal periods. This violates Labor Code
20 §§ 226.7, 510, 512, 558, and 1194 and IWC Wage Order 5-2001;

21 e. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
22 business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor
23 Code § 2802, including, but not limited to, the use of their personal cell phones and expenses
24 associated with working from home, including, but not limited to, their personal computer, internet,
25 and similar items. Labor Code § 2802 requires that an employer must indemnify its employees for all
26 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
27 their duties, and Defendants' failure to do so has violated this section;

1 f. Failing to provide Plaintiff and Aggrieved Employees with wage statements
2 that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and
3 Aggrieved Employees are not paid all wages due, as stated above. As such, the wage statements
4 provided by Defendants fail to accurately state all gross wages earned, in violation of Labor Code §§
5 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages
6 earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect
7 during the pay period and the corresponding numbers of hours worked at each rate, in violation of
8 Labor Code §§ 226(a)(9) and 226.3; and

9 g. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
10 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
11 stated above, Plaintiff and certain Aggrieved Employees were not paid all wages due during the course
12 of their employment and, as a result of this failure, they were not timely paid all wages due at the
13 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of
14 Plaintiff and Aggrieved Employees who have left their employment with Defendants.

15 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
16 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

17 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
18 The Labor Code violations alleged against Defendants herein arose throughout California, including
19 in Riverside County.

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1 **II.**

2 **PARTIES**

3 **A. Plaintiff**

4 5. Plaintiff MERCEDES CERVANTES was employed as a non-exempt by Defendants
5 from December 2021 through April 2022 in Riverside County, California.

6 **B. Defendant**

7 6. Defendant PLAN-IT LIFE, INC., is a California corporation that employed Plaintiff
8 and Aggrieved Employees in Riverside County, California.

9 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
10 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
11 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
12 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
13 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
14 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
15 designated hereinafter as DOES when such identities become known.

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

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

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

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

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1194, and 2802; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

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

14. On September 15, 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 September 15, 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.

IV.

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: December 20, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Daniel F. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff