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SUPERIOR COURT

2023 APR -6 PM 3: 15

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10 individually and on behalf of all other similarly situated employees

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

ANA ARMAS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VIENNA CONVALESCENT HOSPITAL,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No.

STK-CV-40E -2023- 3403

COMPLAINT FOR DAMAGES:

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Competition
7. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff ANA ARMAS ("Plaintiff"), on behalf of herself and all other similarly situated employees, hereby files this Complaint against Defendants VIENNA CONVALESCENT HOSPITAL, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

INTRODUCTION

1. This is an individual and Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff for failing to provide overtime wages, meal and rest period violations, wage statement violations, waiting time penalties, and unfair competition.

INDIVIDUAL AND PAGA COMPLAINT

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3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that Defendants reside in San Joaquin County and/or are foreign entities and have not designated any county in California as being where they maintain their principal offices. In addition, some of the wrongful acts and violations of law asserted herein occurred within San Joaquin County, and Defendant's obligation to pay wages arose in San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on approximately January 26, 2023. Plaintiff provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The January 26, 2023, notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but is not limited to the following: all non-exempt employees who have worked, or continue to work, for Defendants in California from January 26, 2022 to present.

5. ANA ARMAS is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, VIENNA CONVALESCENT HOSPITAL, INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

8. At all times mentioned herein, each Defendants were the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 11 as though fully set forth herein.

13. Plaintiff worked for Defendant from January 2017 to May 2022. Plaintiff worked as a CNA and was paid an hourly rate. Plaintiff typically worked forty (40) hours per week or more, at eight (8) hours per day or more. Defendant paid Plaintiff non-discretionary remuneration, including for perfect attendance (PA) and other bonuses. The PA bonuses resulted in extra pay of \$0.50 to \$1.00. However, Defendant failed to include this remuneration into the regular rate of pay for purposes of overtime, sick leave, and meal and rest premiums.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY OVERTIME WAGES**
4 **(As to all Defendants)**

5 14. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 13 as though fully
6 set forth herein.

7 15. During the period Plaintiff was employed by Defendants, Defendants were required to
8 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
9 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
10 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A);*
11 Cal. Lab. Code §§ 510, 1194.

12 16. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
13 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
14 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
15 worked at their regular rate of pay because Defendants failed to include renumerations into the
16 regular rate of pay for purposes of overtime wages.

17 17. Plaintiff and similarly situated employees were not exempt from overtime protections
18 employees under the California Wage Orders and Labor Code.

19 18. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **SECOND CAUSE OF ACTION**
23 **MEAL PERIOD VIOLATIONS**
24 **(As to all Defendants)**

25 19. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 18 as though fully
26 set forth herein.

27 20. An employer must provide an employee a meal period in accordance with the
28 applicable Wage Order, and California Labor Code sections 226.7 and 512.

1 21. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours.

4 22. California Labor Code section 512 and Wage Order No. 4 section 11(B) further
5 provide that employers may not employ employees for a work period for more than ten (10) hours
6 per day without providing the employee with a second meal period of at least thirty (30) minutes.
7 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
8 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
9 (1) hour of pay at their regular rate of compensation for each meal period not provided.

10 23. Defendants employed Plaintiff and similarly situated employees for periods of more
11 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
12 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
13 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
14 employees to take their first meal period before the completion of their fifth hour of work and failed
15 to allow Plaintiff and similarly situated employees to take their second meal period before the
16 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
17 rights to all meal periods throughout their employment.

18 24. Defendants further failed to pay Plaintiff and similarly situated employees the
19 applicable meal period premiums for any such missed meal breaks based on their regular rate of pay
20 because Defendants failed to include renumerations into the regular rate of pay for purposes of meal
21 period premiums.

22 25. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
23 employees have been damaged as stated in the section below entitled "DAMAGES," which is
24 incorporated here to the extent pertinent as if set forth here in full.

25 **THIRD CAUSE OF ACTION**
26 **REST PERIOD VIOLATIONS**
 (As to all Defendants)

27 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
28 set forth herein.

27. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

28. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

29. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

30. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods based on their regular rate of pay. because Defendants failed to include renumerations into the regular rate of pay for purposes of rest period premiums.

31. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully set forth herein.

33. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the

1 *name and address of the legal entity that secured the services of the*
2 *employer, and (9) all applicable hourly rates in effect during the pay*
3 *period and the corresponding number of hours worked at each hourly rate*
4 *by the employee. The deductions made from payment of wages shall be*
5 *recorded in ink or other indelible form, properly dated, showing the*
6 *month, day, and year, and a copy of the statement and the record of the*
7 *deductions shall be kept on file by the employer for at least three years at*
8 *the place of employment or at a central location within the State of*
9 *California.*

10 34. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
11 itemized statement or failed to provide an accurate and complete itemized statement showing the
12 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
13 accurately itemize all applicable hourly rates in effect during the pay period, all overtime and double
14 time corresponding rates of pay, all meal and rest period premiums corresponding rates of pay, and
15 gross and net wages earned. Plaintiff and similarly situated employees were not able to promptly
16 and easily determine their overtime rate of pay, meal and rest period premiums rates of pay, and
17 gross and net wages earned from their paystubs alone. Additionally, Plaintiff and similarly situated
18 employees suffered confusion over whether they received all wages owed and were prevented from
19 effectively challenging information on their wage statements.

20 35. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
21 employees have been damaged as stated in the section below entitled "DAMAGES," which is
22 incorporated here to the extent pertinent as if set forth here in full.

23 **FIFTH CAUSE OF ACTION**
24 **WAITING TIME PENALTIES**
25 **(As to all Defendants)**

26 36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully
27 set forth herein.

28 37. An employer must pay an employee who is terminated all unpaid wages immediately
upon termination. See Cal. Lab. Code § 201.

37 38. An employer must pay an employee who resigns all unpaid wages within seventy-two
38 (72) hours of their resignation. See Cal. Lab. Code § 202.

39. Plaintiff and similarly situated employees did not receive all wages, including overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

40. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. See Cal. Lab. Code § 203.

41. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were paid non-discretionary remunerations, including for perfect attendance (PA) and other bonuses. The PA bonuses resulted in extra pay of \$0.50 to \$1.00. However, Defendants failed to include this remuneration into the regular rate of pay for purposes of overtime, sick leave, and meal and rest premiums. The hours Plaintiff worked were accurately reflected on her timecards. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions (“B&P”) Code § 17200.

45. Plaintiff and similarly situated employees were not paid all wages owed, including overtime wages, meal and rest period premiums, and paid sick leave, during their employment or any

1 time thereafter. Moreover, through Defendants' conduct Plaintiff and similarly situated employees were
2 denied statutory protections regarding meal and rest periods.

3 46. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
4 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
5 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

6 47. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
7 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
8 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
9 sections 17203, 17208, violations of California Labor Code sections 226.7, 245 *et seq.*, 510, 512, and
10 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing
11 of this Action.

12 **SEVENTH CAUSE OF ACTION**
13 **PRIVATE ATTORNEYS GENERAL ACT**
14 **(As to all Defendants)**

15 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully
16 set forth herein.

17 49. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
18 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
19 current and former employees:

- 20 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime
21 Wages)
- 22 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B)
23 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 24 • Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest
25 Periods or Pay Premiums in Lieu Thereof)
- 26 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 27 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 28 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
Work in Any Industrial Welfare Commission Order)

- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

50. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

51. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

52. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the

violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

6. As to the Seventh Cause of Action:

a. For civil penalties as provided in the Labor Code for each enumerated violation;

b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;

c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

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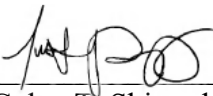
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- 1 7. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

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10 Dated: April 5, 2023

Shimoda & Rodriguez Law, PC

11
12 By: 
13 Galen T. Shimoda
14 Justin P. Rodriguez
15 Renald Konini
16 Attorneys for Plaintiff