

FILED

2023 FEB -3 AM 11:39

BRANCON E. RILEY, CLERK

BY TAYLOR HIEDEMAN
DEPUTY

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

Attorneys for Plaintiff Mary Magdalena Mejia, on behalf of herself and on behalf of all similarly situated individuals

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

MARY MAGDALENA MEJIA, individually
and on behalf of all similarly situated
individuals,

Plaintiff,

v.

TOURO UNIVERSITY MEDICAL GROUP,
a California corporation, TOURO
UNIVERSITY CALIFORNIA, form of entity
unknown, and DOES 1 through 10, inclusive,

Defendants.

CASE NO:

STK-CV-40E-2023- 953

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES (LABOR CODE §§ 510, 1194, AND 1194.2)**
- 2. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 510, AND 1194; IWC WAGE ORDER 4-2001)**
- 3. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 510, 512, AND 1194; IWC WAGE ORDER 4-2001)**
- 4. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e), (h))**
- 6. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

DEMAND FOR JURY TRIAL

1 Plaintiff MARY MAGDALENA MEJIA (“Plaintiff”), individually and on behalf of all
2 similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public,
3 complains of TOURO UNIVERSITY MEDICAL GROUP, a California corporation, TOURO
4 UNIVERSITY CALIFORNIA, form of entity unknown, and any subsidiaries or affiliated companies
5 (hereinafter collectively referred to as “Defendants”), and each of them, as follows:

6 **I.**

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiff
9 and all other employees who work or formerly worked for Defendants within the State of California.

10 2. For at least four (4) years prior to the filing of this action and continuing to the present
11 (the “liability period”) Defendants have had a consistent policy of failing to pay all minimum and
12 overtime wages due to Class Members (as defined below); provide legally compliant meal and rest
13 periods or compensation in lieu thereof to Class Members; and to provide accurately itemized wage
14 statements to Class Members.

15 3. Plaintiff, on behalf of herself and the Class Members, brings this action pursuant to
16 Labor Code §§ 226(a), 226.7, 510, 512, 1194, and 1194.2, seeking compensation for all unpaid wages,
17 liquidated damages, unpaid premium meal and rest period wages, statutory penalties, injunctive and
18 other equitable relief, and reasonable attorneys’ fees and costs.

19 4. Plaintiff, on behalf of herself and Class Members and pursuant to Business &
20 Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all
21 benefits Defendants enjoyed from their failure to pay all wages due to Class Members.

22 5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
23 because Defendants employed Plaintiff and Class Members in San Joaquin County, California.

24 6. Pursuant to the Judicial Council’s Emergency Rule 9 of the California Rules of Court,
25 Plaintiff’s claims are subject to tolling from April 6, 2020 through October 1, 2020.

26 \\\

27 \\\

28 \\\

1 **II.**

2 **PARTIES**

3 **A. Plaintiff**

4 7. Plaintiff MARY MAGDALENA MEJIA has been employed by Defendants since
5 February 2020 as a non-exempt employee in San Joaquin County, California.

6 8. During her work with Defendants, Plaintiff has been:

- 7 a. Willfully denied the payment of all minimum and overtime wages;
8 b. Willfully denied rest periods or compensation in lieu thereof;
9 c. Willfully denied meal periods or compensation in lieu thereof; and
10 d. Willfully denied accurately itemized wage statements.

11 **B. Defendants**

12 9. Defendant TOURO UNIVERSITY MEDICAL GROUP is a California corporation
13 that employed Plaintiff and Class Members throughout the State of California, including San Joaquin
14 County, California.

15 10. Defendant TOURO UNIVERSITY CALIFORNIA is an unknown form of entity that
16 employed Plaintiff and Class Members throughout the State of California, including San Joaquin
17 County, California.

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

25 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
26 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
27 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
28 attributable to the other Defendants.

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

III.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action on behalf of herself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All non-exempt California employees employed by Defendants at any time since the date four years preceding the filing of this Action, plus any additional time tolled by the California State Judicial Council pursuant to Emergency Rule 9 in response to the COVID-19 pandemic, and continuing through the present.

15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

16. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

17. The potential members of the Class as defined are so numerous that joinder of all Class Members is impracticable. While the precise number of Class Members has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 75 persons in the State of California who fall within the Class definition.

1 18. Accounting for employee turnover during the relevant period necessarily increases this
2 number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of Class Members. Joinder of Class Members is not practicable.

4 **B. Commonality**

5 19. There are questions of law and fact common to the Class that predominate over any
6 questions affecting only individual Class Members. These common questions of law and fact include,
7 without limitation:

- 8 a. Whether Defendants failed to pay Plaintiff and Class Members all minimum
9 and overtime wages due, in violation of Labor Code §§ 510, 1194, and 1194.2;
- 10 b. Whether Defendants failed to properly provide rest periods or compensation in
11 lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
12 226.7, 510, and 1194, and IWC Wage Order 4-2001;
- 13 c. Whether Defendants failed to properly provide meal periods or compensation
14 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
15 226.7, 510, 512, and 1194, and IWC Wage Order 4-2001;
- 16 d. Whether Defendants failed to provide Plaintiff and Class Members with
17 accurately itemized wage statements, in accordance with Labor Code § 226(a)
18 and (e); and
- 19 e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
20 to Business & Professions Code § 17200 *et seq.*

21 **C. Typicality**

22 20. The claims of the named Plaintiff are typical of the claims of Class Members. Plaintiff
23 and Class Members sustained injuries and damages arising out of and caused by Defendants' common
24 course of conduct in violation of laws, regulations that have the force and effect of law, and statutes
25 as alleged herein.

26 \\\

27 \\\

28 \\\

1 **D. Adequacy of Representation**

2 21. Plaintiff will fairly and adequately represent and protect the interests of Class
3 Members. Counsel who represents Plaintiff are competent and experienced in litigating large
4 employment class actions.

5 **E. Superiority of Class Action**

6 22. A class action is superior to other available means for the fair and efficient adjudication
7 of this controversy. Individual joinder of all proposed Class Members is not practicable, and
8 questions of law and fact common to the proposed Class predominate over any questions affecting
9 only individual members of the proposed Class. Each member of the proposed Class has been
10 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

11 23. Class action treatment will allow those similarly situated persons to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
14 action that would preclude its maintenance as a class action.

15 **IV.**

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

19 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

20 **(LABOR CODE §§ 510, 1194, AND 1194.2)**

21 24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set
22 forth herein.

23 25. Labor Code § 510 provides that, "any work in excess of eight hours in one workday
24 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
25 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
26 one-half times the regular rate of pay for an employee." Labor Code § 1194 provides that "any
27 employee receiving less than the legal minimum wage or the legal overtime compensation applicable
28 to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this

1 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
2 costs of suit."

3 26. Defendants failed to pay all minimum and overtime wages earned during the course
4 of employment, in violation of Labor Code §§ 510, 1194, and 1194.2, when it rounded down the
5 hours reflected on Plaintiff's and Class Members' time records to pay fewer hours than were actually
6 worked. On a weekly basis, this rounding deprived Plaintiff and Class Members of significant hours
7 worked and wages due. These failures to pay all minimum and overtime wages due constitute
8 violations of Labor Code §§ 510, 1194, and 1194.2.

9 27. As a result of the unlawful acts of Defendants in willfully failing to pay all wages,
10 Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and
11 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and
12 costs pursuant to Labor Code § 1194, and liquidated damages pursuant to Labor Code § 1194.2.

13 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

14 **V.**

15 **SECOND CAUSE OF ACTION**

16 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

17 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

18 **(LABOR CODE §§ 226.7, 510, AND 1194 AND IWC WAGE ORDER 4-2001)**

19 28. Plaintiff incorporates paragraphs 1 through 27 of this Complaint as though fully set
20 forth herein.

21 29. Plaintiff and Class Members are entitled to one hour of pay for each day that
22 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
23 IWC Wage Order 4-2001.

24 30. Defendants failed to pay premium wages to Plaintiff and Class Members who were
25 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and
26 Class Members are routinely unable to take a 10-minute rest period for every four (4) hours of work
27 or major fraction thereof, but are not paid premium wages of one hour's pay for each missed rest
28 period. They are rarely, if ever, provided with a legally compliant rest period, and are never paid a

1 premium wage for any missed rest period. Furthermore, when Plaintiff and Class Members are
2 provided with a rest period, Defendants maintain an illegal policy and practice requiring them to
3 remain on Defendants' premises during their rest periods, and subject to Defendants' control, which
4 is not a rest period at all. Defendant also fails to authorize rest periods as required by California law.
5 This violates Labor Code §§ 226.7, 510, and 1194 and IWC Wage Order No. 4-2001.

6 31. Pursuant to Labor Code §§ 226.7, 510, and 1194 and IWC Wage Order 4-2001,
7 Plaintiff seeks the payment of all rest period compensation and all unpaid wages that she and Class
8 Members are owed, according to proof.

9 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

10 VI.

11 THIRD CAUSE OF ACTION

12 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

13 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

14 (LABOR CODE §§ 226.7, 510, 512, AND 1194 AND IWC WAGE ORDER 4-2001)

15 32. Plaintiff incorporates paragraphs 1 through 31 of this Complaint as though fully set
16 forth herein.

17 33. Plaintiff and Class Members are entitled to one hour of pay for each day that
18 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7
19 and 512 and IWC Wage Order 4-2001.

20 34. Defendants failed to pay premium wages to Plaintiff and Class Members who were
21 denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001. .
22 Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-
23 minute meal period for every shift worked that exceeded five hours in duration, and a second meal
24 period when they worked shifts greater than ten hours, but were not paid premium wages of one
25 hour's pay for each missed meal period. Defendants also maintained illegal meal period policies and
26 practices. When they are able to take a meal period, they are oftentimes late, cut short, or on-duty,
27 and subject to Defendants' control. This violates Labor Code §§ 226.7, 510, 512, and 1194 and IWC
28 Wage Order 4-2001.

35. Pursuant to Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all unpaid wages and unpaid meal period compensation that she and Class Members are owed, according to proof.

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

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e), (h))

36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as though fully set forth herein.

37. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (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 only 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 (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. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

38. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members were not paid all minimum and overtime wages due and all premium wages for unauthorized meal and rest periods, as stated above. As such, the wage statements provided by Defendants failed to

accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9). In addition, the wage statements issued to Plaintiff and Class Members overstate the total hours worked by improperly including duplicate hours worked at certain rates of pay and set forth the overtime rate as only the overtime premium and not the correct applicable rate of one and one-half times the regular rate of pay, in violation of Labor Code §§ 226(a)(2) and 226(a)(9).

39. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and Class Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to accurately state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

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

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this

1 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
2 and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within
3 the meaning of Code of Civil Procedure § 1021.5.

4 42. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
5 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
6 appropriate equitable relief.

7 43. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
8 practices.

9 44. Wage and hour laws express fundamental public policies. Properly providing
10 employees with all wages due are fundamental public policies of this State and of the United States.
11 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
12 standards, to ensure that employees are not required or permitted to work under substandard and
13 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
14 lower their costs by failing to comply with minimum labor standards.

15 45. Defendants have violated statutes and public policies. Through the conduct alleged
16 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
17 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
18 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
19 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
20 guaranteed to all employees under law.

21 46. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
22 §17200 *et seq.* of the Business & Professions Code.

23 47. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
24 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
25 17200 *et seq.* of the Business & Professions Code.

26 48. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
27 similarly situated have been damaged in a sum as may be proven.
28

49. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the money Defendants have unlawfully failed to pay.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For liquidated damages pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
2. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiff and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
4. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
5. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
7. An award of prejudgment and post-judgment interest;
8. An award providing for payment of costs of suit;
9. An award of attorneys' fees; and
10. Such other and further relief as this Court may deem just and proper.

\\

\\

1 Dated: February 2, 2023

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

4 By: Daniel F. Gaines
5 DANIEL F. GAINES
6 EVAN S. GAINES
7 Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

10 Dated: February 2, 2023

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: Daniel F. Gaines
14 DANIEL F. GAINES
15 EVAN S. GAINES
16 Attorney for Plaintiff