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10 as Private Attorney General

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA BARBARA – ANACAPA DIVISION**

13 STATE OF CALIFORNIA ex rel.
14 NAYELY RODRIGUEZ TOLEDO, as
15 Private Attorney General,

16 Plaintiff,

17 v.

18 WEBER AND BECKER DENTAL
19 GROUP AKA SANTA BARBARA
20 DENTAL CARE; and DOES 1-25,
21 inclusive,

22 Defendants.

Case No. 23CV01475

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

23 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. NAYELY RODRIGUEZ
24 TOLEDO as Private Attorney General (“Plaintiff”), who asserts claims against WEBER AND
25 BECKER DENTAL GROUP AKA SANTA BARBARA DENTAL CARE, and DOES 1-25,
inclusive (collectively “Defendants” or “Employer”) as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of herself, approximately more than 25 similarly situated current and former aggrieved employees employed by Employer in

1 California, and the People of the State of California (hereinafter collectively “Employees”),
2 employed between January 12, 2022, and the conclusion of this action (“Statutory Period”)

3 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
4 permits an aggrieved employee to recover civil penalties set forth within the California Labor
5 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
6 penalties for violations of California Labor Code provisions that do not contain their own civil
7 penalties. Employees bring this civil action to recover civil penalties for the violations identified
8 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
9 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
10 are sought for violations committed against Employees of Employer.

11 3. Plaintiff has filed an exhaustion letter with the California Labor and Workforce
12 Development Agency (“LWDA”) providing notice of her intent to bring a private attorneys
13 general action for recovery of penalties under the PAGA. The LWDA has not investigated within
14 the time set forth by statute and Plaintiff is now authorized to bring the present action.

15 **JURISDICTION AND VENUE**

16 4. This Court has jurisdiction over this action pursuant to the California Constitution,
17 Article VI, §10.

18 5. Venue is proper in this Court because this action arises from work performed in
19 Santa Barbara County, CA.

20 **PARTIES**

21 6. For all times relevant herein, NAYELY RODRIGUEZ TOLEDO was an adult
22 individual residing in the State of California.

23 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
24 alleges, that Defendant WEBER AND BECKER DENTAL GROUP AKA SANTA BARBARA
25 DENTAL CARE was and is a corporation with its principal place of business in Santa Barbara
26 County, California.

27 8. Whenever in this Complaint reference is made to any act, deed, or conduct of
28 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or

1 through one or more of its agents, employees, or representatives, who was actively engaged in the
2 management, direction, control, or transaction of the business and affairs of Defendants.

3 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
4 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
5 therefore sues said defendants (the “Doe Defendants”) by such fictitious names. Plaintiff will
6 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
7 as the identities of the Doe Defendants are ascertained.

8 10. Plaintiff is informed and believes, and based thereon alleges, that the Doe
9 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
10 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
11 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
12 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
13 to the extent of the liability of Defendants as alleged herein.

14 11. Plaintiff is further informed and believe, and thereon allege, that at all times herein
15 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
16 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
17 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
18 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
19 Whenever and wherever reference is made to individuals who are not named as defendants in this
20 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
21 acted on behalf of Defendants named in this Complaint within the scope of their respective
22 employment or agency with Defendants.

23 **COMMON FACTS**

24 12. Nayely Rodriguez Toledo began working for Weber and Becker Dental Group aka
25 Santa Barbara Dental Care (WBD)’s Santa Barbara Dental Care branch on February 22, 2021.
26 Nayely was hired as an Insurance Coordinator. Nayely’s job duties included performing insurance
27 verifications, following up with insurance claims, AR reports, answering phones, checking
28

1 patients in and out, managing the hygiene schedule, front office ordering, following up with
2 patients, and some back-of-office duties.

3 13. Nayely generally started work at 6 a.m. clocking in by way of computer. The only
4 break Nayely took was her lunch break. That break was taken around 12 p.m. or 1 p.m. Nayely
5 regularly clocked out of work by 4:30 p.m.

6 14. When Nayely first started working at SBDC, they told her she could take her meal
7 break at any time as long as it was within the 10 hours she was working. Later, Nayely was told to
8 take her meal break before the five-hour mark. Following this instruction was impracticable due to
9 the busy flow of patients and staff not able to relieve each other.

10 15. Moreover, WBD regularly interrupted Employees during their breaks. For
11 example, they would get called to help in the front or would be approached with questions about
12 certain patients. When Nayely was interrupted on her break, she would be called back to work
13 while still being clocked out for lunch, without pay. If the office was extra short-handed, Nayely
14 had to cut her break or take a quick 10-minute break for her lunch. WBD was well aware of this
15 situation and the shortage of staffing.

16 16. In addition, Nayely did not receive her final paycheck until one week after her
17 termination date. Nayely was terminated on July 5, 2022, but did not receive her final paycheck
18 until July 12, 2022.

19 **FIRST COUNT**

20 **Failure to Provide Compliant Meal Periods; Failure to Pay Premium Wages**

21 **(By Plaintiff against All Defendants)**

22 17. Plaintiff incorporates by reference and realleges each and every allegation
23 contained above, as though fully set forth herein.

24 18. Pursuant to California Labor Code § 512, no employer shall employ an employee
25 for a work period of more than five hours without providing a meal break of not less than thirty
26 minutes in which the employee is relieved of all of his or her duties. An employer may not employ
27 an employee for a work period of more than ten hours per day without providing the employee
28 with a second meal period of not less than thirty minutes, except that if the total hours worked is

1 no more than twelve hours, the second meal period may be waived by mutual consent of the
2 employer and the employee only if the first meal period was not waived.

3 19. Pursuant to the IWC Wage Orders applicable to Employees, in order for an “on
4 duty” meal period to be permissible, the nature of the work of the employee must prevent an
5 employee from being relieved of all duties relating to his or her work for the employer and the
6 employee must consent in writing to the “on duty” meal period. Employees did not consent in
7 writing to an “on duty” meal period. Further, the nature of the work of Employees was not such
8 that they are prevented from being relieved of all duties. Employees must be free to leave the
9 premises during meal-and-rest breaks; otherwise, the time is considered “on duty” and must be
10 paid accordingly.

11 20. Throughout the Statutory Period, Defendant failed to provide Employees with
12 compliant off-duty meal breaks. Rather than providing off-duty meal breaks, Defendant provided
13 Employees with on-duty meal breaks in violation of California law. Defendant required
14 Employees to remain available to work during breaks, as-needed.

15 21. As a result of the foregoing, Employer violated California law and is subject to
16 civil penalties.

17 **SECOND COUNT**

18 **Failure to Provide Compliant Rest Periods; Failure to Pay Premium Wages**

19 **(By Plaintiff against All Defendants)**

20 22. Plaintiff incorporates by reference and realleges each and every allegation
21 contained above, as though fully set forth herein.

22 23. Pursuant to the applicable Industrial Welfare Commission Wage Order, employers
23 must provide non-exempt employees a ten (10) minute duty-free rest period for every four (4)
24 hours worked or major fraction thereof. Duty-free rest periods must be paid. As with meal
25 periods, as stated by the California Department of Industrial Relations, employers cannot require
26 that employees stay on the work premises during rest periods. An employer who fails to provide a
27 duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day
28 in which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c).

24. Throughout the Statutory Period, Defendant failed to provide Employees with compliant off-duty rest periods for the reasons discussed above. Defendant provided Employees with on-duty rest breaks in violation of California law. Defendant also required Employees to remain available to work during breaks, as-needed.

25. Defendants are subject to all civil penalties and other remedies under the PAGA.

THIRD COUNT

Failure to Pay Minimum Wages Owed

(By Plaintiff against All Defendants)

26. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

27. Section 1197 provides that “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” “[T]he minimum wage for all industries shall not be less than the amounts set forth in this subdivision” Cal. Lab. Code, § 1182.12, subd. (b).

28. Pursuant to Section 1197.1, “(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in

addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.”

29. Throughout the Statutory Period, Defendant failed to pay Employees at least minimum wage for all time worked, including time during which they are required to remain on-duty during meal periods, which must be paid at a rate of not less than minimum wage pursuant to California law. Defendant paid zero dollars to Employees for hours worked during their meal periods. Consequently, Defendant violated the foregoing minimum wage laws.

30. Defendants are subject to all civil penalties and other remedies under the PAGA.

FOURTH COUNT

Failure to Pay Overtime Wages Owed

(By Plaintiff against All Defendants)

31. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

32. “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198.

33. Pursuant to Industrial Welfare Commission Wage Order 1, “[...] employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8)

1 hours on the seventh (7th) consecutive day of work in a workweek. (c) The overtime rate of
2 compensation required to be paid to a nonexempt full-time salaried employee shall be computed
3 by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly
4 salary.

5 34. "Any employer or other person acting on behalf of an employer who violates, or
6 causes to be violated, a section of this chapter or any provision regulating hours and days of work
7 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
8 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
9 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
10 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
11 employee for each pay period for which the employee was underpaid in addition to an amount
12 sufficient to recover underpaid wages." Cal. Lab. Code, § 558, subd. (a).

13 35. Employees regularly worked more than 8 hours a day, above 40 hours in the
14 workweek and were incorrectly compensated for overtime. Some overtime was paid, however, this
15 figure did not accurately reflect the overtime amount actually owed to employees. Time was
16 improperly not counted as hours worked. Employees also accrued additional overtime wages for
17 hours in excess of 8 in their workdays, and/or in excess of 40 in their workweeks, that were only
18 partially paid to Employees.

19 36. Defendants are subject to all civil penalties and other remedies under the PAGA.

20 **FIFTH COUNT**

21 **Inaccurate Wage Statements**

22 **(By Plaintiff against All Defendants)**

23 37. Plaintiff incorporates by reference and realleges each and every allegation
24 contained above, as though fully set forth herein.

25 38. California Labor Code §226(a) sets forth reporting requirements for employers
26 when they pay wages: "An employer, semimonthly or at the time of each payment of wages, shall
27 furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying
28 the employee's wages, or separately if wages are paid by personal check or cash, an accurate

1 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
2 employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any
3 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
4 all deductions made on written orders of the employee may be aggregated and shown as one item,
5 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
6 name of the employee and only the last four digits of his or her social security number or an
7 employee identification number other than a social security number, (8) the name and address of
8 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
9 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
10 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee....”

12 39. Throughout the Statutory Period, and on Employer’s final payment of wages to
13 Employees at or near the time of their discharge or resignation, Employer failed, and continues to
14 fail, to furnish Employees, complete and accurate wage statements upon each payment of wages in
15 violation of California Labor Code §226(a). Employer is subject to civil penalties as provided by
16 law.

17 40. Throughout the Statutory Period, Employer failed to furnish Employees with
18 accurate itemized statements at the time of each payment of wages showing the correct gross
19 wages earned, correct total hours worked, correct net wages earned, and the corresponding correct
20 number of hours worked at each applicable hourly rate. Rather than providing statements of hours
21 worked, including rest periods, and a correct payment of wages based thereon, Employer failed to
22 capture and pay Employees for all time, and also failed to capture and pay premium pay for
23 noncompliant meal-and-rest periods. Consequently, Employer failed to provide Employees
24 accurate itemized wages statements as required by Section 226.

25 41. Defendants are subject to all civil penalties and other remedies under the PAGA.

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1 **SIXTH COUNT**

2 **Failure to Timely Pay All Wages**

3 **(By Plaintiff against All Defendants)**

4 42. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 43. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
7 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
8 calendar month, on days designated in advance by the employer as the regular paydays. Labor
9 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
10 between the 16th and the 26th day of the month during which the labor was performed, and labor
11 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
12 between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

13 44. Rather than timely paying Employees all wages due within the periods set forth
14 above, throughout the Statutory Period, Employer failed to timely pay Employees for all wages
15 earned as required by law.

16 45. Defendants are subject to civil penalties as provided by law.

17 **SEVENTH COUNT**

18 **Failure to Comply with Recordkeeping Requirements**

19 **(By Plaintiff against All Defendants)**

20 46. Plaintiff incorporates by reference and realleges each and every allegation
21 contained above, as though fully set forth herein.

22 47. Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, at a
23 central location in the state or at the plants or establishments at which employees are employed,
24 payroll records showing the hours worked daily by and the wages paid to, and the number of
25 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
26 respective plants or establishments. These records shall be kept in accordance with rules
27 established for this purpose by the commission, but in any case shall be kept on file for not less
28 than three years.”

48. Pursuant to Sections 1198 and the applicable IWC Wage Order, Employer was also required to keep accurate records of Employees' hours worked, and to make those records available for inspection upon Employees' request. The applicable IWC Wage Order provides that "An employee's records shall be available for inspection by the employee upon reasonable request."

49. Throughout the Statutory Period, Employer failed to keep accurate records showing the hours worked daily by Employees.

Employer is subject to additional civil penalties for its failure to keep accurate records of
Employees' hours worked.

EIGHTH COUNT

Failure to Pay All Wages Due at Separation

(By Plaintiff against All Defendants)

50. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

51. “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

52. Throughout the Statutory Period, Employer failed to pay Employees all wages earned. These wages were owed and due to Employees at the time of their termination or within 72 hours of their resignation. Employer did not provide full payment of these wages to Employees at these times. Employer's failure to timely pay these wages at the prescribed times, and failure to

1 pay Employees' continued wages for the 30-day period thereafter, constitute a violation of
2 Sections 201, 202, and 203, for which Employer is subject to additional civil penalties.

3 **PRAYER**

4 WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

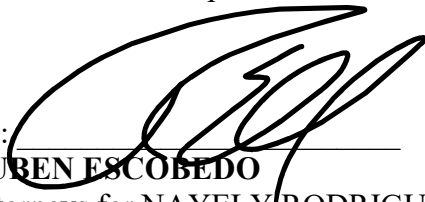
5 1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to
6 be ascertained at trial exceeding \$25,000.

7 2. For reasonable costs and attorneys' fees; and

8 3. For such other and further relief as the Court deems proper.

9
10 DATED: April 7, 2023

WORKWORLD LAW CORP.
A Professional Corporation

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12
13 By: 

RUBEN ESCOBEDO

14 Attorneys for NAYELY RODRIGUEZ
15 TOLEDO
16 as Private Attorney General
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