

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TYKIAH TORRES,

Plaintiff,

vs.

JSI ACQUISITION, INC.; JONATHAN
ISTRIN; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **23STCV06790**

) **COMPLAINT FOR DAMAGES FOR:**

) **1) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

COMES NOW Plaintiff, TYKIAH TORRES (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants JSI ACQUISITION, INC.; JONATHAN ISTRIN and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant JSI ACQUISITION, INC. is and was a California corporation, doing business in Los Angeles County, and which employed Plaintiff. JSI ACQUISITION, INC. does business as LIBERTANA HOME HEALTH among other names.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant JONATHAN ISTRIN is and was a male resident of the State of California, and the owner, principal, director, and/or managing agent of JSI ACQUISITION, INC. Defendant JONATHAN ISTRIN is being included in this lawsuit pursuant to Labor Code Section 558.1 in that he was involved in the day-to-day operations of the business and controlled the wages, hours, and/or working conditions of Plaintiff and other similarly situated hourly, non-exempt employees. JSI ACQUISITION, INC., JONATHAN ISTRIN, and DOES 1 to 25, inclusive are collectively referred to as “Defendant(s)” or “JSI”.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
6 and capacities of these fictitiously named defendants.

7
8 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
9 that information and belief, alleges that at all times herein mentioned, each of the remaining
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
11 under the authority of their agency, employment, or representative capacity, with the consent
12 of his/her codefendants.

13 **GENERAL ALLEGATIONS**

14 7. Plaintiff started working for JSI on or around 2017 as a care provider.

15 8. During her tenure, Plaintiff was classified as an hourly, non-exempt employee.

16 9. Plaintiff's latest rate of pay is \$16.04/hour.

17
18 10. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
19 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
20 Security Services USA, Inc., an onsite security provider. After about a year of employment,
21 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
22 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
23 termination of employment and weekly payment of wages to temporary employees. The trial
24 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
25 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
26 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
27 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
28 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the

1 PAGA representative to sue for violations that the representative has personally suffered. The
2 PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves
3 and others. The statute also states that an "aggrieved employee" is "any person who was
4 employed by the alleged violator and against whom one or more of the alleged violations was
5 committed." Because at least one of the violations that Huff had alleged had affected him
6 personally, the Court of Appeal denied Securitas' motion.

7 11. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
8 other employees, it allows for suits broader than the specific violations the named employee
9 experienced. Therefore, even if the employee did not personally experience the Labor Code
10 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's
11 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
12 other employees, including ALL hourly, non-exempt employees.

13 12. It is Plaintiff's position that JSI has violated numerous Labor Code Sections against
14 Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly
15 employees who worked for JSI at their various locations in the State of California during the
16 relevant PAGA period.

17 13. JSI violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
18 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
19 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
20 JSI had a company policy wherein they would disproportionately round down the number of
21 hours worked by Plaintiff and other aggrieved employees, resulting in "time shaving" and
22 further resulting in aggrieved employees not being paid for all hours worked. Plaintiff and
23 others were advised to put their shift times as opposed to actual hours worked on the
24 timesheets which led to only whole, rounded numbers appearing on timesheets.

25 14. Due to the above "off the clock" violations and due to company policy, JSI also
26 violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
27 overtime compensation, even though they worked more than 8 hours per day, 12 hours per day,
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1 and/or 40 hours per week throughout their employment. Plaintiff and other aggrieved
2 employees' actual work hours entitled them to overtime compensation and double time
3 compensation, however, JSI did not compensate its hourly, non-exempt employees with the
4 correct amount of overtime. Furthermore, JSI failed to include bonuses/incentive payments in
5 calculating Plaintiff's and other employees' regular rate of pay for use in deciphering the
6 correct overtime rate of pay. Additionally, the incentive and bonus payments were also not
7 factored into Plaintiff's and others' regular rate for purposes of receiving meal and rest break
8 premiums per the Ferra v. Loews case. Furthermore, Plaintiff and others would not receive the
9 proper overtime pay when working 7 consecutive days and when working shifts of over 12
10 hours per day. For instance, for the pay period November 6, 2022 to November 12, 2022,
11 Plaintiff worked several 15 hour shifts, but was not compensated for any double time.

12 15. JSI also violated Labor Code § 226.7 and the appropriate Industrial Welfare
13 Commission Wage Order no. 4/5 because it failed to provide Plaintiff and other similarly
14 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
15 majority portion thereof, throughout their employment. JSI did not completely relieve Plaintiff
16 and others of all duty during said rest periods. JSI did not pay to Plaintiff and others one
17 additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or
18 more statutory rest periods was not provided. It was not part of the company policy for
19 employees such as Plaintiff to take rest breaks. The concept of rest breaks was never discussed
20 with employees nor was it ever implemented as it was not company policy. Moreover, it would
21 not have been possible for employees such as Plaintiff to take such rest breaks due to having
22 consistent job duties with respect to patients and needing to constantly monitor patients. As
23 such, the culture as well as the policies and procedures of JSI did not lend itself to the
24 employees receiving statutory rest breaks wherein they were relieved of all work duties. The
25 environment at JSI was not conducive to receiving statutory rest breaks under California law
26 and timely, statutory rest breaks were not authorized or enforced.

27 16. JSI violated Labor Code §§ 512 and 226. 7 along with Industrial Welfare Commission
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1 Wage Order no. 4/5 because it failed to provide hourly, non-exempt employees, including
2 Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5)
3 hours of work throughout their employment. JSI did not completely relieve Plaintiff and other
4 employees of all duty during said meal periods. JSI did not pay to Plaintiff and its hourly, non-
5 exempt employees one additional hour of pay at their regular rate of compensation for each
6 workday that one or more statutory meal periods was not provided. The hourly, non-exempt
7 employees would often not be able to receive their meal periods before the 5th hour worked
8 due to the nature of their work and due to having to continually tend to the patients. The latter
9 was the same reason that Plaintiff and others were not able to take uninterrupted and complete
10 meal periods wherein they were relieved of all work duties. Furthermore, and as alluded to
11 above, Plaintiff and others would also have to work through their statutory breaks due to the
12 workload. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break
13 was not part of the company culture and was not enforced by JSI. Consequently, it was the
14 normal practice and custom of JSI not to authorize, permit, and enforce timely statutory meal
15 periods. If JSI had Plaintiff sign a meal period waiver, it would not be valid and enforceable
16 since Plaintiff and others generally worked more than a 6-hour shift. If JSI had Plaintiff sign an
17 on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
18 would be invalid and unenforceable because the nature of Plaintiff's job does not and did not
19 prevent her from taking a meal period. Moreover, any such "on duty" meal period agreement
20 did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff
21 and others rarely received statutory, timely meal periods during their employment. If JSI
22 argues that Plaintiff and others were actually paid for their meal breaks, the latter would not
23 mean there was no violation since Plaintiff and others were essentially denied any meal breaks
24 for them to rest and get something to eat. The solution for JSI is not to keep their employees
25 from taking meal periods, but to hire additional staff and "breakers" to make sure that their
26 caregivers receive statutory breaks. To the extent that JSI argues that employees receive meal
27 break premium pay for missed meal periods, that argument is inconsequential for PAGA
28 penalty purposes since the PAGA penalties are for the violations themselves, irrespective of

1 whether an employee received the premium payment for a missed, short, or interrupted meal
2 period. In Kirby v. Immoos Fire Protection, Inc., the Court stated, "section 226.7 does not give
3 employers a lawful choice between providing either meal and rest breaks or an additional hour
4 of pay." See Kirby v. Immoos Fire Protection, Inc., (2012) 53 Cal.4th 1244, 1256 (emphasis in
5 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
6 committed a violation even if the remedy for the violation has been paid. See Wert v. U.S.
7 Bancorp, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
8 and culture at JSI was not conducive to receiving consistent, timely, statutory meal breaks
9 under California law. Moreover, any meal or rest break premiums paid were not compensated
10 at the weighted average regular rate, inclusive of bonuses and/or incentive payments.

11 17. Furthermore, during the relevant time period, and due to the above labor code
12 violations, JSI failed to pay Plaintiff and other similarly situated aggrieved employees all
13 wages due to them within any time period specified by California Labor Code section 204. JSI
14 was also in violation of California Labor Code section 226(a) by failing to include pertinent
15 information on the wage statements, including but not limited to, the correct hourly rate, all
16 hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages
17 earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end
18 of the pay period, all employee identifying information, the correct name and address of the
19 legal employer, and reimbursement for business expenses, among others. As such, JSI did not
20 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
21 itemized wage statements.

22 18. During the relevant time period, JSI also failed to keep accurate and complete payroll
23 records showing the actual hours worked per day and the wages paid to Plaintiff and others
24 pursuant to California Labor Code sections 1174(d).

25 19. JSI also violated Labor Code § 203 because it willfully failed to pay other
26 similarly situated aggrieved employees earned and due wages upon separation of employment,
27 either immediately upon involuntary termination, or within 72 hours of resignation. These
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1 earned but unpaid wages include compensation for all hours worked, including minimum
2 wages, overtime compensation, and premium pay for missed meal and rest breaks.

3 20. During the relevant time period, Plaintiff and other aggrieved employees incurred
4 necessary, business-related expenses and costs that were not reimbursed by JSI. These costs
5 include, but are not limited to, use of personal phones for business-related purposes and
6 uniforms as well as mileage reimbursement. Accordingly, JSI was in violation of California
7 Labor Code sections 2800 and 2802.

8 **FIRST CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT**

10 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
11 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194,**
1197, 1198, 2800, 2802, and Wage Order no. 4/5

12 **(Against all Named Defendants and all DOE Defendants)**

13 21. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.

15 22. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
16 Defendants of the specific violations of the California Labor Code that Defendants
17 and DOE defendants have violated and continue to violate.

18 23. Pursuant to California Labor code section 2699.3, no response was received from the
19 LWDA within 65 days of the postmark date of the above-alleged letter.

20 24. Plaintiff therefore has exhausted all administrative remedies required of her under
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
22 cause of action and pursue penalties in a representative action for Defendants' violations of the
23 Labor Code.

24 25. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
25 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code
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1 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
2 on behalf of himself or herself and other current or former employees pursuant to the
3 procedures specified in California Labor Code section 2699.3.

4 26. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
5 violator and had one or more of the alleged violations committed against her, and therefore is
6 properly suited to represent the interests of other current and former hourly, non-exempt
7 employees who worked for JSI at any of their various California locations during the relevant
8 PAGA period.

9 27. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
10 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
11 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

12 28. Plaintiff therefore has exhausted all administrative remedies required of her under
13 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
14 cause of action and pursue penalties in a representative action for Defendants’ violations of the
15 Labor Code.

16 29. California Labor Code section 2699 et seq. imposes penalties upon culpable
17 Defendants for violating the Labor Code.

18 30. California Labor Code section 558 establishes a civil penalty as follows: Any
19 employer or other person action on behalf of an employer who violates, or causes to be
20 violated, a section of this chapter or any provision regulating hours and days of work in any
21 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
22 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
23 dollars (\$50) for each underpaid employee for each pay period for which the employee was
24 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
25 employee for each pay period for which the employee was underpaid ...;

26 31. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
27 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
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1 seeking individual/victim specific relief or underpaid wages under this particular cause of
2 action.

3 32. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
4 the following:

5 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
6 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2800, 2802
7 via 2698 and 2699 any other Labor Codes and Wage Orders (including no. 4/5) violated on
8 the facts alleged in this Complaint.

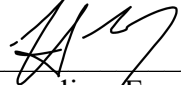
9 33. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
10 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
11 employees as alleged herein in an amount to be shown according to proof at trial and within the
12 jurisdictional limits of this Court.

13 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
14 follows:

- 15 1. For the imposition of civil penalties;
16 2. For maximum civil penalties available under Labor Code Section 2699 against
17 Defendants in a manner and amount authorized by that statute, as described more
18 particularly in the Complaint and representative PAGA claims;
19 3. For all costs and disbursements incurred in this suit;
20 4. Reasonable attorney's fees where available by law, including but not limited to,
21 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
22 1021.5, and/or other applicable laws; and
23 5. For such other and further relief as this Court may deem proper.

24
25 DATED: March 28, 2023

MESSRELIAN LAW INC.

26 By 
27 Harout Messrelian, Esq.
28 Attorneys for Plaintiff Tykiah Torres