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individually and on behalf of all others similarly situated

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10
11 WILLIAM KWANGHO JUNG, individually
and on behalf of all others similarly situated,

12 Plaintiff(s),

13 v.

14
15 MED-PLUS PHARMACY INC.; and DOES 1
through 100,

16 Defendant(s).
17

Case No. 37-2023-00020936-CL-OE-CTL

FIRST AMENDED COMPLAINT

1. Failure to Provide Compliant Rest Periods
2. Wage Statement Penalties
3. Waiting Time Penalties
4. Violation of Unfair Competition Law
5. Private Attorney General Act.

18
19 **RELEVANT PARTIES**

20 1. Plaintiff William Kwangho Jung (“Plaintiff”) is an adult resident of San Diego, California,
21 and was at all times relevant residing in San Diego, California.

22 2. Defendant Med-Plus Pharmacy Inc. (“Defendant”) is a California corporation with its
23 principal place of business located in San Diego, California. Defendant is registered to and does
24 conduct business in the State of California and is subject to the laws of the State of California. All
25 acts and omissions of Defendant employees as alleged herein occurred while they were acting
26 within the course and scope of their employment.

27 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
28 through 100, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such

1 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
2 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
3 informed and believes, and based on such information and belief alleges, that each of the fictitiously
4 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
5 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
6 and Doe Defendants are collectively referred to as “Defendants”.

7 **JURISDICTION AND VENUE**

8 4. This action is properly filed in San Diego because the acts and omissions that give rise to
9 Plaintiff’s claims took place in San Diego, and Defendants transact substantial business in this
10 County.

11 5. This Court has jurisdiction over Defendants because Defendants’ unlawful conduct as
12 alleged herein occurred in San Diego, California and Plaintiff suffered damages from such conduct
13 within San Diego, California.

14 **FACTUAL ALLEGATIONS**

15 6. At all times relevant, Plaintiff was Defendants’ employee.

16 7. Plaintiff was employed by Defendants from 3/1/2022 to the 09/28/22.

17 8. Defendant failed to provide Plaintiff with compliant rest breaks because Plaintiff’s rest
18 breaks were regularly missed due to an unrealistic workload and severe understaffing.

19 9. Despite not being provided with compliant rest breaks, Defendant did not pay premium pay
20 for these missed breaks at Plaintiff’s regular rate of pay.

21 10. Defendants failed to provide Plaintiff with accurate wage statements because the wage
22 statements issued to Plaintiff did not accurately list total wages owed including premium pay that
23 should have been paid, among other things.

24 11. Due to Defendants’ failure to pay all wages due to Plaintiff during their employment, it
25 follows that Defendant failed to pay all wages due at the conclusion of Plaintiff’s employment as
26 well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

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PAGA ALLEGATIONS

12. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code section 2699.3.

13. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action under PAGA after the following requirement have been met:

14. The aggrieved employee has provided written notice by online filing to the LWDA and by certified mail to the employer (hereinafter “Employee’s Notice”) of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations; and

15. The LWDA has provided notice (hereinafter “LWDA’s Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee’s claims. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide such Notice within 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

16. On February 16, 2023, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of specific provisions of the Labor Code alleged to have been violated by Defendants, including the facts and theories to support the alleged violations.

17. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks PAGA Penalties on behalf of all Aggrieved Employees.

18. The Aggrieved Employees are defined as “All other nonexempt, hourly employees, current and former, who were employed by Defendants within one year prior to February 16, 2023, through final disposition of this action.”

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Compliant Rest Periods**

3 **By Plaintiff Against All Defendants**

4 19. Plaintiff incorporates by reference the paragraphs above.

5 20. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit
6 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net
7 per four hours or major fraction thereof.

8 21. Furthermore, “[d]uring rest periods employers must relieve employees of all duties and
9 relinquish control over how employees spend their time.” (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
10 5th 257, 269 (2016)).

11 22. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

12 23. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
13 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
14 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
15 11 Cal. 5th 858 (2021)).

16 24. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a rest
17 break was missed.

18 25. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
19 penalties, attorney fees, and costs.

20 **SECOND CAUSE OF ACTION**

21 **Wage Statement Penalties**

22 **By Plaintiff Against All Defendants**

23 26. Plaintiff incorporates by reference the paragraphs above.

24 27. Labor Code section 226(a) requires employers to provide itemized wage statements to its
25 employees that identify accurate information regarding their compensation. Defendants, as a matter
26 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
27 statements to Plaintiff in violation of Labor Code section 226(a).
28

1 28. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
2 and incomplete.

3 29. Defendants knowingly and intentionally issued wage statements that were inaccurate and
4 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to
5 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

6 30. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
7 costs.

8 **THIRD CAUSE OF ACTION**

9 **Waiting Time Penalties**

10 **By Plaintiff Against All Defendants**

11 31. Plaintiff incorporates by reference the paragraphs above.

12 32. Labor Code sections 201 and 202 require that an employer provide an employee with all
13 wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the
14 employee's resignation.

15 33. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
16 accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a
17 penalty from the due date at the same rate until paid or until an action is commenced, not to exceed
18 thirty days.

19 34. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the
20 conclusion of employment.

21 35. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees,
22 and costs.

23 36.

24 **FOURTH CAUSE OF ACTION**

25 **Violation of Unfair Competition Law**

26 **By Plaintiff Against All Defendants**

27 37. Plaintiff incorporates by reference the paragraphs above.

28 38. Defendants' conduct described herein constitutes unfair competition.

1 39. Specifically, Defendants have gained an unfair advantage over other similarly situated
2 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
3 owed.

4 40. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
5 wrongfully withheld wages.

6 41. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

7 **FIFTH CAUSE OF ACTION**

8 **Private Attorneys General Act**

9 **By Plaintiff and the Aggrieved Employees Against All Defendants**

10 42. Plaintiff incorporates by reference the paragraphs above.

11 43. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
12 violation(s) of the Labor Code.

13 44. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

14 45. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide
15 Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof,
16 the penalties in Labor Code section 2699 apply.

17 46. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
18 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3
19 and 2699 apply.

20 47. With respect to violations of Labor Code section 203 for failure to pay all wages due to
21 Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in
22 Labor Code section 2699 apply.

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24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

26 **First Cause of Action**

- 27 1. Damages and/or penalties pursuant to Labor Code section 226.7
28 2. Interest

- 1 3. Attorneys' fees
2 4. Costs
3 5. Other relief the court deems proper

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5 Second Cause of Action

- 6 1. Penalties pursuant to Labor Code section 226
7 2. Attorneys' fees
8 3. Costs
9 4. Other relief the court deems proper

10 Third Cause of Action

- 11 1. Penalties pursuant to Labor Code section 203
12 2. Attorneys' fees
13 3. Costs
14 4. Other relief the court deems proper

15 Fourth Cause of Action

- 16 1. Restitution of all wrongfully withheld wages
17 2. Attorneys' fees
18 3. Costs
19 4. Other relief the court deems proper

20 Fifth Cause of Action

- 21 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.
22 2. Attorneys' fees
23 3. Costs
24 4. Other relief the court deems proper

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27 DATED: June 23, 2023

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/s/ Daniel Ginzburg
DANIEL GINZBURG
Attorney for Plaintiff

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