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DEYANIRA SALAZAR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE
UNLIMITED JURISDICTION

DEYANIRA SALAZAR, an individual;

Plaintiffs;

vs.

HOME CARE STAY SF, INC., a California
stock corporation; FRANK BILLANTE, an
individual; DIANA GILBERTSON-RHODES, an
individual; and DOES 1 through 100, inclusive;

Defendants.

Case No.: **CVP82301872**

COMPLAINT

[IMAGED FILE]

Plaintiffs DEYANIRA SALAZAR hereby alleges the following:

PARTIES

1. Plaintiff DEYANIRA SALAZAR ("Plaintiff") is, and at all times mentioned herein, an individual residing in Coachella, CA.
2. Defendant HOME CARE STAY SF, INC. ("Home-Care") is, and at all times mentioned herein, a California stock corporation. Its registered address is 74040 Highway 111, Suite J, Palm Desert, CA 92260.
3. Defendant FRANK BILLANTE ("Billante") is, and at all times mentioned herein, an individual residing in Palm Desert, CA. Plaintiffs are informed and believe and thereon allege that

1 Defendant Billante is a person acting on behalf of Defendant Home Care, as understood under Labor
2 Code section 558.1.

3 4. Defendant DIANA GILBERTSON-RHODES (“Rhodes”) is, and at all times mentioned
4 herein, an individual residing in Palm Desert, CA. Plaintiffs are informed and believe and thereon allege
5 that Defendant Rhodes is a person acting on behalf of Defendant Home Care, as understood under Labor
6 Code section 558.1.

7 5. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as
8 DOES 1 through 100 (the “DOE Defendants”) and therefore, sues these defendants by such fictitious
9 names. Plaintiffs will amend the Complaint to insert DOE Defendants’ true names and capacities when
10 ascertained. Plaintiffs are informed and believe and therefore allege that each of these fictitiously named
11 defendants is legally responsible for the events and happenings referred to herein, and legally hereinafter
12 alleged were proximately caused by the acts of such defendants, and each of them.

13 6. Home-Care, Billante, Rhodes, and DOE Defendants, will be collectively referred to as
14 “Defendants” hereafter.

15 7. Plaintiffs are informed and believe and on that basis allege that at all times mentioned
16 herein, each of the defendants was the agent and employee of the remaining defendants, and was acting
17 within the scope and purpose of such agency and employment in doing the acts herein alleged.

18 **JURISDICTION**

19 8. This Court has personal jurisdiction over Defendants because Defendants are domiciled
20 in California and/or have sufficient minimum contacts with California.

21 9. This Court has subject matter jurisdiction over this Complaint as the action arises under
22 the California Labor Code and associated provision. This Court has original jurisdiction over the matter.
23 (Cal. Const., art VI § 10.)

24 10. Venue is proper in this Court because Defendants employed Plaintiff in the County of
25 Riverside. Defendants’ obligations and liability to Plaintiff therefore arose in Riverside County.

26 11. This is an unlimited jurisdiction matter as the amount in controversy is over \$25,000 as
27 understood under Code of Civil Procedure section 85.
28

GENERAL ALLEGATIONS

12. At all times relevant herein, Plaintiff was an employee of Defendants.

13. Defendants employed over 25 employees during the time Plaintiff worked for Defendants.

14. Plaintiff began working for Defendants in October 2015. Initially, she worked as Home Care Provider. Eventually, she was promoted and worked as an office administrator in charge of Human Resource matters.

15. During her time working in the office, Plaintiff worked Monday through Friday from 8:30 a.m. to 5:00 p.m. She was told employees for Defendants took “working lunches.” Even when Plaintiff would be eating at her desk, she was still expected to answer calls and was frequently interrupted by management to conduct other tasks.

16. Defendant’s timesheets confirm that they did not expect employees to clock out during their meal breaks either. Instead of the typical four columns to record the time worked, Defendants standard timesheets only had two columns to record the time employees got to work and the time they left work. There was no way for employees to record when they took their meal breaks. Furthermore, Defendants had no policies about clocking in and out for meal breaks within the employee handbook. Instead, the “Clocking in or out” section of the handbook only focused on policies for clocking in late.

17. Instead of being paid for 8.5 hours for her continuous work through the entire length of her shift, Plaintiff was only paid 8 hours for these shifts as employees were still not paid for their “lunches.” Plaintiff never received overtime pay for the extra 0.5 hours a day of work that she performed during her “working lunches.” She also did not receive a meal break premium when she was not given the opportunity to take an off duty meal break.

18. There was no formal policy that allowed employees to take rest breaks either. Rather, all employees in the office were expected to be on call at all times, similar to their “working lunch” policy. Plaintiff was not given the opportunity to take any rest breaks while working in the office.

19. Plaintiff was terminated from Home Care Stay SF, Inc. on January 16, 2023.

20. Plaintiff is informed and believes and thereon alleges that their unpaid labor was not the result of an isolated or unintentional payroll error. Rather, Plaintiff is informed and believes and

thereon alleges that Defendants specifically adopted a policy that deliberately and unfairly benefited Defendants.

FIRST CAUSE OF ACTION

Failure to Pay Overtime Wages

(Against all Defendants)

21. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

22. Labor Code section 510 and Wage Order 7 requires an employee be paid overtime (i.e., one and a half (1.5) times their regular rate of pay) if the employee works (a) more than eight (8) hours in one workday, (b) more than of forty (40) hours in any one workweek, and (c) and the first eight (8) hours worked on the seventh day of work in a workweek.

23. California law also requires an employee be paid double time (i.e., two (2) times their regular rate of pay) if the employee works (a) more than twelve (12) hours in one workday, or (b) more than eight (8) hours on the seventh day of a workweek. This overtime must be calculated to include unpaid on-duty mealtime and work performed off-the-clock when employees' hours exceeded eight in a day or forty in a week.

24. Labor Code section 1198 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

25. As explained above, Defendants have unlawfully denied Plaintiff the payment of earned overtime compensation in violation of Labor Code sections 510, 558, 1194, 1198, and Wage Order 7. Defendants therefore are liable to Plaintiff for unpaid overtime compensation.

26. Under Labor Code section 1194, Plaintiff is entitled to recover such unpaid overtime compensation, interest, attorney's fees, and costs.

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35. Defendants failed to provide Plaintiff with an opportunity to take a rest break as required by California law.

36. The extra pay for missed breaks constitutes wages under California law. (*Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132, 134.)

37. Defendants are liable to Plaintiff for one additional hour of pay at Plaintiff's regular rate of pay for each day that a rest break was not provided, along with costs and attorney's fees.

FOURTH CAUSE OF ACTION

Waiting Time Penalties pursuant to Labor Code section 203(a)

(Against all Defendants)

38. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

39. Defendants discharged Plaintiff. Pursuant to Labor Code section 202, Plaintiff's final wages were due and payable immediately at the time of discharge.

40. Defendants had failed to pay all wages due to Plaintiffs upon resignation/termination.

41. Labor Code section 203 provides:

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.

42. In violation of California law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff for all wages earned and all hours worked upon the end of Plaintiff's employment.

43. Pursuant to Labor Code section 203, Plaintiff is entitled to continuing wages for up to thirty days.

FIFTH CAUSE OF ACTION

Failure to Provide Accurate Wage Statements

(Against all Defendants)

44. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

45. An employer in California must provide an itemized wage statement to their employees as prescribed by Labor Code section 226(a)

46. Plaintiff suffered an injury pursuant to Labor Code section 226(e)(2) as Defendants have failed to include all time worked and wages earned.

47. Plaintiff is informed and believes and thereon alleges that the violations of Labor Code section 226 were not isolated and unintentional payroll errors due to a clerical or inadvertent mistake.

48. Because of the injury suffered by Plaintiff, Plaintiff is entitled to statutory damages set forth in Labor Code section 226(e), along with costs and attorney's fees.

SIXTH CAUSE OF ACTION

Private Attorney General Act (PAGA) Claims

(Against all Defendants)

49. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

50. Under PAGA, Plaintiff is permitted to seek civil penalties for violations of the Labor Code through a civil action brought by Plaintiff and other current or former employees.

51. Labor Code section 558 states:

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

52. Labor Code section 2699(f) states:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

1 (3) If the alleged violation is a failure to act by the Labor and Workplace
2 Development Agency, or any of its departments, divisions, commissions, boards,
agencies, or employees, there shall be no civil penalty.

3 53. As a result of Defendants' conduct alleged above, Plaintiff seeks penalties under PAGA
4 on behalf of Plaintiff and all other aggrieved employees. Plaintiff also seeks reasonable attorney's fees
5 and costs pursuant to Labor Code section 2699(g)(1).

6 54. Specifically, Plaintiff seeks civil penalties under PAGA on behalf of herself and all other
7 aggrieved employees for Unpaid Overtime Wages (Labor Code section 510), Unpaid Meal Breaks
8 (Labor Code section 512), Unpaid Rest Breaks (Labor Code section 226.7; 8 Cal. Code. Regs. §11070),
9 Failure to Provide Accurate Wage Statements (Labor Code section 226), Waiting Time Penalties and or
10 Delay in payments (Labor Code section 203, 204.)

11 55. On or about February 13, 2023, Plaintiff provided written notice to the Labor and
12 Workforce Development Agency through the agency's online system. Plaintiff also sent a copy of this
13 notice to Defendants via certified mail.

14 56. No response was provided from the LWDA to Plaintiff's letter. Plaintiff therefore has
15 exhausted all administrative procedures required under Labor Code section 2698 *et seq.* Plaintiff may
16 bring a claim for civil penalties cause of action under PAGA.

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- a. For damages according to proof.
- b. For reasonable attorneys and costs as permitted by law.
- c. For costs of suit.
- d. For interest, as permitted by law.
- e. For all applicable statutory penalties according to proof.
- f. For all applicable civil penalties according to proof.
- g. For such other and further relief that the Court may deem just and proper.
- h. For all applicable civil and statutory penalties according to proof.

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JAMES JOSEPH
Attorney for Plaintiff