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Attorneys for Plaintiff Mayra Diaz, on behalf of herself and on behalf of all similarly situated individuals

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF TULARE**

MAYRA DIAZ, on behalf of herself and on  
behalf of all similarly situated individuals,

Plaintiff,

v.

KAWEAH DELTA HEALTH CARE  
DISTRICT, a California nonprofit corporation,  
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: VCU297155

*Assigned to the Honorable Bret D. Hillman,  
Dept. 7*

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

**1. FAILURE TO PAY ALL MINIMUM  
WAGES DUE (LABOR CODE §§ 510,  
1194, AND 1194.2; IWC WAGE ORDER 5-  
2001)**

**2. VIOLATION OF BUSINESS AND  
PROFESSIONS CODE § 17200**

**3. PENALTIES PURSUANT TO LABOR  
CODE § 2699(f) FOR VIOLATIONS OF  
LABOR CODE §§ 510 AND 1194 AND  
PURSUANT TO LABOR CODE § 2699(a)  
FOR VIOLATIONS OF LABOR CODE §  
558**

**DEMAND FOR JURY TRIAL**

*Complaint Filed: April 3, 2023*

1 Plaintiff MAYRA DIAZ (“Plaintiff”), on behalf of herself, all similarly situated individuals,  
2 and on behalf of the general public, and under the Labor Code Private Attorneys General Act of 2004,  
3 complains of Defendant KAWEAH DELTA HEALTH CARE DISTRICT, a California nonprofit  
4 corporation and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as  
5 “Defendants”), and each of them, as follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure  
9 § 382 and Labor Code § 2698 *et seq.*, respectively, on behalf of Plaintiff and the Class of individuals  
10 described in detail below against Defendants.

11 2. For at least four (4) years prior to the filing of this action and continuing to the present  
12 (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum wages  
13 due.

14 3. Plaintiff, on behalf of herself and Class Members, brings this action pursuant to Labor  
15 Code §§ 510, 1194, and 1194.2 seeking compensation for all unpaid wages, liquidated damages,  
16 injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

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

20 5. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code  
21 §§ 2698 *et seq.*, seeks penalties for Defendants’ various violations of the California Labor Code.

22 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395  
23 because Defendants employed Plaintiff and Class Members throughout California, including in  
24 Tulare County.

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1 **II.**

2 **PARTIES**

3 **A. Plaintiff**

4 7. Plaintiff MAYRA DIAZ was employed by Defendants from August 2019 through  
5 November 2022 as a non-exempt employee and performed work for Defendants in Tulare County,  
6 California.

7 8. During her work with Defendants, Plaintiff was willfully denied the payment of all  
8 minimum wages due.

9 **B. Defendants**

10 9. Defendant KAWEAH DELTA HEALTH CARE DISTRICT is a California nonprofit  
11 corporation. Defendant KAWEAH DELTA HEALTH CARE DISTRICT employed Plaintiff and  
12 Class Members throughout the State of California, including in Tulare County.

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

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

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

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1 **III.**

2 **CLASS ACTION ALLEGATIONS**

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

6 **THE CLASS**

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

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

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

18 **A. Numerosity**

19 16. The potential Class Members as defined are so numerous that joinder of all class  
20 members is impracticable. While the precise number of Class Members has not been ascertained at  
21 this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently  
22 employ, and during the relevant time periods employed, over 50 persons in the State of California  
23 who fall within the Class definition.

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

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**B. Commonality**

18. There are questions of law and fact common to the Class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

- a. Whether Defendants failed to pay all minimum wages due to Plaintiff and Class Members, in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 5-2001; and
- b. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

**C. Typicality**

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

**D. Adequacy of Representation**

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

**E. Superiority of Class Action**

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

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

1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

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

5 **FAILURE TO PAY ALL MINIMUM WAGES DUE**

6 **(LABOR CODE §§ 510, 1194, AND 1194.2 AND IWC WAGE ORDER 5-2001)**

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

9 24. During the liability period, Defendants failed to pay Plaintiff and Class Members all  
10 minimum wages due during the course of employment, in violation of Labor Code §§ 510, 1194, and  
11 1194.2. Defendants required Plaintiff and Class Members to be on-call, but did not compensate them  
12 for all time spent on-call at or above the minimum wage, notwithstanding the fact they were subject  
13 to Defendants' control during this on-call time. An employer is obligated to pay the wages of an  
14 hourly employee for all time that the employee is under the control of the employer, and this includes  
15 all the time the employee is suffered or permitted to work, whether or not required to do so. When  
16 Plaintiff and Class Members were on-call, they were under the control of Defendants and required to  
17 be compensated for all hours worked at no less than the minimum wage. Defendants, however, failed  
18 to do so. In addition, Defendants required Plaintiff and Class Members to attend mandatory training  
19 classes, but would only pay them for one hour of training, regardless of how long the training was.  
20 These instances deprived Plaintiff and Class Members of significant hours worked and minimum  
21 wages due, and constitute violations of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order  
22 5-2001.

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

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

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set forth herein.

27. 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, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

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

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

31. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
2 guaranteed to all employees under law.

3 32. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of  
4 §17200 *et seq.* of the Business & Professions Code.

5 33. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise  
6 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §  
7 17200 *et seq.* of the Business & Professions Code.

8 34. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others  
9 similarly situated have been damaged in a sum as may be proven.

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

## 17 VI.

### 18 THIRD CAUSE OF ACTION

19 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**  
20 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**  
21 **CODE §§ 510 AND 1194 AND PURSUANT TO**  
22 **LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE § 558**

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

25 37. As a result of the acts alleged above, including the Labor Code violations set forth in  
26 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

27 38. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to  
28 penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 510 and 1194 and
- b. Pursuant to Labor Code § 2699(f), the penalties and wages as authorized by Labor Code § 558.

39. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

40. On March 27, 2023 and May 8, 2023, Plaintiff sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of March 27, 2023 or May 8, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

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

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages and liquidated damages pursuant to Labor Code §§ 510, 1194, and 1194.2 in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
2. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
3. For civil penalties and wages pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
4. An award providing for payment of costs of suit pursuant to Labor Code § 1194 and other applicable law;
5. An award of attorneys' fees pursuant to Labor Code § 1194 and other applicable law;
6. An award of prejudgment and post-judgment interest; and
7. Such other and further relief as this Court may deem just and proper.

\\

1 Dated: June 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: June 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

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\_\_\_\_\_ (For messenger) my business address is:

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**Agent for Kaweah Delta Health Care District**

\_\_\_\_ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

\_\_\_\_\_ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

\_\_\_\_ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission on the counsel of record listed above.

I declare under penalty of perjury that the foregoing is true and correct.

*Katherine Soriano*  
KATHERINE SORIANO