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ERIC DANIEL MIZE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ERIC DANIEL MIZE, as an aggrieved
employee and private attorney general,

Plaintiff,

vs.

RIVERSIDE POSTACUTE CARE, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **CVRI 2302408**

**REPRESENTATIVE ACTION
COMPLAINT**

**(1) VIOLATION OF CALIFORNIA
LABOR CODE § 2699, ET SEQ.
(PRIVATE ATTORNEYS
GENERAL ACT)**

1 Plaintiff ERIC DANIEL MIZE (“Plaintiff”), as an aggrieved employee and as a private
2 attorney general, based upon facts that either have evidentiary support or are likely to have
3 evidentiary support after a reasonable opportunity for further investigation and discovery, alleges
4 as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants RIVERSIDE POSTACUTE CARE,
7 LLC and DOES 1 THROUGH 50 (hereinafter also collectively referred to as “Defendants”) as a
8 representative action on behalf of himself and certain other current and former non-exempt
9 employees of Defendants against whom one or more of the alleged violations was committed
10 (hereinafter collectively referred to as the “Aggrieved Employees”) pursuant to California Labor
11 Code sections 2698, *et seq.* Plaintiff is an aggrieved employee against whom one or more of the
12 alleged violations was committed. The civil penalties sought by Plaintiff exceed the minimal
jurisdiction limits of the Superior Court and will be established according to proof at trial.

13 2. The Court has jurisdiction over this action pursuant to the California Constitution,
14 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
15 except those given by statute to other courts. The statutes under which this action is brought do
16 not specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over Defendants because, upon information and belief,
18 Defendants are citizens of California, have sufficient minimum contacts in California, or
19 otherwise intentionally avail themselves of the California market so as to render the exercise of
20 jurisdiction over them by the California courts consistent with traditional notions of fair play and
21 substantial justice.

22 4. Venue is proper in this Court because, upon information and belief, Defendants
23 maintain offices, have agents, and/or transact business in the State of California, County of
24 Riverside.

25 **PARTIES**

26 5. Plaintiff ERIC DANIEL MIZE is an individual residing in the State of California,
27 County of Riverside.
28

1 6. Defendant RIVERSIDE POSTACUTE CARE, LLC is, and at all times herein
2 mentioned was, a limited liability company organized and existing under the laws of the State of
3 California, and registered to do business in the state of California.

4 7. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
5 and therefore sues these defendants by such fictitious names. The Doe defendants may be
6 individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges,
7 that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent,
8 servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at
9 all times mentioned acting within the scope, purpose, consent, knowledge, ratification and
10 authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this
11 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
12 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in
13 some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged
14 were proximately caused by its conduct.

15 8. Defendants are, and at all times herein mentioned were, (a) conducting business
16 in the County of Riverside, State of California, and (b) the employer of Plaintiff consistent with
17 the California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

18 9. Plaintiff further alleges that Defendants, directly or indirectly, controlled or
19 affected the working conditions, wages, working hours, and conditions of employment of Plaintiff
20 and the Aggrieved Employees so as to make each of said Defendants employers and employers
21 jointly liable under the statutory provisions set forth herein.

22 **GENERAL ALLEGATIONS**

23 10. Defendants operate a skilled nursing and rehabilitation facility.

24 11. Defendants have employed Plaintiff to work as a Certified Nursing Assistant since
25 approximately March 2019.

26 12. At all relevant times set forth herein, Defendants employed Plaintiff and the
27 Aggrieved Employees as hourly-paid or non-exempt employees.

28 13. Throughout the time period involved in this case, Defendants had the authority to

1 hire and terminate Plaintiff and the Aggrieved Employees; to directly or indirectly control work
2 rules, working conditions, wages, working hours, and conditions of employment of Plaintiff and
3 the Aggrieved Employees; and to hire and terminate the employment of Plaintiff and the
4 Aggrieved Employees.

5 14. At all times herein mentioned, Defendants were subject to the Labor Code of the
6 State of California and the applicable Industrial Welfare Commission Orders.

7 15. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in
8 an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt
9 employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring
10 Plaintiff and the Aggrieved Employees to work off-the-clock without compensation, thereby
11 failing to pay them for all hours worked, including minimum and overtime wages. Defendants
12 also implemented policies that prohibited Plaintiff and the Aggrieved Employees from accurately
13 recording the actual time worked, resulting in a failure to pay Plaintiff and the Aggrieved
14 Employees all wages owed. In addition, Defendants routinely failed to permit Plaintiff and the
15 Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of
16 California law. Defendants also failed to reimburse Plaintiff and the Aggrieved Employees for all
17 necessary business-related expenses, and failed to pay reporting wages.

18 16. Throughout the time period involved in this case, Defendants have implemented
19 policies and practices which failed to provide Plaintiff and the Aggrieved Employees with timely
20 and duty-free meal periods. Defendants routinely failed to relieve Plaintiff and the Aggrieved
21 Employees of all duties during their meal periods, regularly failed to relinquish control over
22 Plaintiff and the Aggrieved Employees during their meal periods, regularly failed to permit
23 Plaintiff and the Aggrieved Employees a reasonable opportunity to take their meal periods, and
24 regularly impeded or discouraged Plaintiff and the Aggrieved Employees from taking thirty (30)
25 minute uninterrupted meal breaks no later than the end of their fifth hour of work and/or from
26 taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of work
27 for shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate records of
28 meal periods taken by Plaintiff and the Aggrieved Employees.

1 17. Throughout the time period involved in this case, Defendants did not adequately
2 inform Plaintiff and the Aggrieved Employees of their right to take meal periods under California
3 law. Moreover, Defendants systematically disregarded their own written policies regarding the
4 provision and timing of meal periods for Plaintiff and the Aggrieved Employees. Instead,
5 Defendants' actual policy and practice was to schedule Plaintiff and the Aggrieved Employees in
6 a way the prohibited them from taking timely and duty-free meal periods, and to require Plaintiff
7 and the Aggrieved Employees to work through their meal periods, for which they were not
8 compensated.

9 18. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
10 and the Aggrieved Employees premium wages for meal periods that were missed, late,
11 interrupted, or shortened in violation of California law. Defendants knew or should have known
12 that Plaintiff and the Aggrieved Employees were entitled to receive all meal periods or payment
13 of one additional hour of pay at their regular rate of pay when a meal period was missed, short,
14 late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide
15 legally compliant meal periods to Plaintiff and the Aggrieved Employees, and routinely failed
16 pay one additional hour of pay to Plaintiff and the Aggrieved Employees at their regular rate of
17 pay when a meal period was missed, short, late, and/or interrupted.

18 19. Throughout the time period involved in this case, Defendants have implemented
19 policies and practices which prohibited Plaintiff and the Aggrieved Employees from taking timely
20 and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiff
21 and the Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift
22 lasting three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods
23 for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
24 permit, and provide such rest breaks in the middle of each work period.

25 20. Throughout the time period involved in this case, Defendants did not adequately
26 inform Plaintiff and the Aggrieved Employees of their right to take rest periods under California
27 law. Moreover, Defendants systematically disregarded their own written policies regarding the
28 provision and timing of rest periods for Plaintiff and the Aggrieved Employees. Instead,

Defendants' actual policy and practice was to schedule Plaintiff and the Aggrieved Employees in a way that regularly prohibited them from taking timely and duty free rest periods, and to regularly require Plaintiff and the Aggrieved Employees to work through their rest periods.

21. Throughout the time period involved in this case, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages for rest periods that were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled to receive all rest periods or payment of one additional hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit Plaintiff and the Aggrieved Employees to take duty-free rest periods, and failed to pay one additional hour of pay to Plaintiff and the Aggrieved Employees at their regular rate of pay when a rest period was missed, short, late and/or interrupted.

22. Throughout the time period involved in this case, Defendant regularly required Plaintiff and the Aggrieved Employees to perform work off-the-clock. Although Defendants prohibited overtime, Defendants still regularly required Plaintiff and the Aggrieved Employees complete all of their assigned duties. To do so, Plaintiff and the Aggrieved Employees were regularly required to perform work off-the-clock for which they were not compensated.

23. Throughout the time period involved in this case, Defendants implemented policies that prohibited Plaintiff and the Aggrieved Employees from accurately recording the actual time worked, resulting in a failure to pay Plaintiff and the Aggrieved Employees all wages owed.

24. Throughout the time period involved in this case, Plaintiff and the Aggrieved Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

25. Throughout the time period involved in this case, Defendants regularly failed to pay overtime compensation to Plaintiff and the Aggrieved Employees when they worked in excess of eight (8) hours in a single work day and/or forty (40) hours in a single work week, or in excess of twelve (12) hours in a single work day and/or eighty (80) hours in a single work week. Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled

1 to receive certain wages for overtime or double overtime compensation and that they were not
2 receiving wages for overtime or double overtime compensation.

3 26. Throughout the time period involved in this case, Defendants failed to pay
4 overtime to Plaintiff and the Aggrieved Employees for all overtime hours worked based on regular
5 rates of pay correctly calculated to include all applicable remuneration.

6 27. Throughout the time period involved in this case, Defendants regularly failed to
7 pay Plaintiff and the Aggrieved Employees at least minimum wages for all hours worked.
8 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
9 to receive at least minimum wages for all hours worked and that they were not receiving at least
10 minimum wages for all hours worked. Defendants' failure to pay minimum wages included, *inter*
11 *alia*, failing to pay Plaintiff and the Aggrieved Employees at the required minimum wage pursuant
12 to California law, and requiring Plaintiff and the Aggrieved Employees to perform work off-the-
clock.

13 28. Throughout the time period involved in this case, Defendants regularly failed to
14 pay Plaintiff and the Aggrieved Employees at least minimum wages for all hours worked.
15 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
16 to receive at least minimum wages for all hours worked and that they were not receiving at least
17 minimum wages for all hours worked. Defendants' failure to pay minimum wages included, *inter*
18 *alia*, failing to pay Plaintiff and the Aggrieved Employees at the required minimum wage pursuant
19 to California law, and requiring Plaintiff and the Aggrieved Employees to perform work off-the-
20 clock.

21 29. Throughout the time period involved in this case, Defendants regularly failed to
22 pay the Aggrieved Employees all wages owed to them upon discharge or resignation. Defendant
23 knew or should have known that the Aggrieved Employees were entitled to receive all wages
24 owed to them upon termination within the time permissible under California Labor Code section
25 202. The Aggrieved Employees did not receive payment of all final wages owed to them upon
26 discharge or resignation, including overtime compensation and minimum wages within any time
27 permissible under California Labor Code section 202.
28

1 30. Throughout the time period involved in this case, Defendants regularly failed to
2 pay Plaintiff and the Aggrieved Employees all wages within any time permissible under
3 California law, including, *inter alia*, California Labor Code section 204. Defendants knew or
4 should have known that Plaintiff and the Aggrieved Employees were entitled to receive all wages
5 owed to them during their employment. Plaintiff and the Aggrieved Employees did not receive
6 payment of all wages, including overtime compensation, minimum wages, and meal and rest
7 period premiums, within any time permissible under California Labor Code section 204.

8 31. Throughout the time period involved in this case, Defendants regularly failed to
9 provide complete or accurate wage statements to Plaintiff and the Aggrieved Employees.
10 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
11 to receive complete and accurate wage statements in accordance with California law, but, in fact,
12 they did not receive complete and accurate wage statements from Defendants. The deficiencies
13 included, *inter alia*, the failure to include the total number of hours worked, the actual gross wages
14 earned, and the correct rates of pay.

15 32. Throughout the time period involved in this case, Defendants regularly failed to
16 keep complete or accurate payroll records for Plaintiff and the Aggrieved Employees. Defendants
17 knew or should have known that Defendants were required keep complete and accurate payroll
18 records for Plaintiff and the Aggrieved Employees in accordance with California law, but, in fact,
19 did not keep complete and accurate payroll records.

20 33. Throughout the time period involved in this case, Defendants regularly failed to
21 maintain accurate records relating to Plaintiff's and the Aggrieved Employees' work periods,
22 meal periods, total daily hours, hours per pay period, and applicable pay rates.

23 34. Throughout the time period involved in this case, Defendants failed to reimburse
24 Plaintiff and the Aggrieved Employees for all necessary business-related expenses, including but
25 not limited to tools and equipment. Defendants knew or should have known that Defendants were
26 required to reimburse Plaintiff and the Aggrieved Employees for all necessary business-related
27 expenses and costs, but, in fact, failed to do so in violation of California law.

28 35. Throughout the time period involved in this case, Plaintiff and the Aggrieved

1 Employees were sometimes required by Defendants to report for work and did report for work,
2 but were either not to put to work or were furnished with less than half of their usual or scheduled
3 day's work. On such occasions, Defendants failed to pay Plaintiff and the Aggrieved Employees
4 required reporting time wages for half their usual or scheduled day's work. Defendant also failed
5 to pay Plaintiff and the Aggrieved Employees for two (2) hours at the employee's regular rate of
6 pay on days in which Plaintiff and the Aggrieved Employees were required to report for work a
7 second time in one workday and were furnished less than two (2) hours of work upon the second
8 reporting.

9 36. Throughout the time period involved in this case, Defendants knew or should have
10 known that they had a duty to compensate Plaintiff and the Aggrieved Employees pursuant to
11 California law. Defendants had the financial ability to pay such compensation, but willfully,
12 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the Aggrieved
13 Employees that they paid all wages owed to them, all in order to increase Defendants' profits.

14 37. On or about March 3, 2023, Plaintiff notified Defendants via certified mail and
15 filed an online PAGA claim notice with the California Labor and Workforce Development
16 Agency ("LWDA") identifying Defendants' violations of the California Labor Code identified in
17 this Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor
18 Code section 2698 *et seq.* in accord with Cal. Lab. Code section 2699.3. As of the filing of this
19 Complaint, the LWDA has not responded to Plaintiff's PAGA claim notice.

20 **FIRST CAUSE OF ACTION**

21 **(Violation of California Labor Code § 2699, Et Seq.)**

22 **(Against All Defendants)**

23 38. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
24 every allegation set forth above.

25 39. Plaintiff brings his first and only cause of action as a representative action on
26 behalf of himself and similarly Aggrieved Employees in the capacity as a private attorney general
27 pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et*
28

1 *seq.* (“PAGA”).

2 40. PAGA specifically provides for a private right of action to recover civil penalties
3 for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any
4 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
5 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
6 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
7 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
8 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
9 2699(a).

10 41. Plaintiff was employed by Defendants and the Labor Code violations alleged
11 above were committed against him during his time of employment. Plaintiff and the other non-
12 exempt employees of Defendants are therefore “aggrieved employees” as defined by California
13 Labor Code section 2699(c) in that they are all current or former employees of Defendants, and
14 one or more of the alleged violations were committed against them.

15 42. As set forth in detail above, during all times relevant to this Action, Defendants
16 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
17 Codes by:

- 18 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
19 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 20 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
21 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 22 c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
23 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
24 hour of premium pay for meal period violations in violation of Labor Code §§
25 226.7 and 512.
- 26 d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to
27 take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved
28 Employees an additional hour of premium pay for rest period violations in

violation of Labor Code §§ 226.7 and 512.

- e. Failing to timely pay the Aggrieved Employees all wages at end of their employment in violation of Labor Code § 203.
- f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204.
- g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226.
- h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees' work periods, meal periods, total daily hours, hours per pay period, total wages and compensation, and applicable pay rates in violation of Labor Code § 1174(d) and the applicable IWC Wage Order.
- i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802.
- j. Failing to pay reporting time wages to Plaintiff and the Aggrieved Employees in violation of Labor Code § 1198 and the applicable IWC Wage Order.

43. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of the Aggrieved Employees and the State of California, requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including but not limited to penalties under California Code of Regulations Title section 11050, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, and 1197.1, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is an amount to be shown according to proof at trial.

44. Plaintiff has exhausted his administrative remedies pursuant to Labor Code § 2699.3. On March 3, 2023, Plaintiff, through his counsel of record, by online filing with the LWDA and by certified mail to the Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts and theories to support the violations, and of Plaintiff's intent to bring a claim

1 for civil penalties under PAGA. Plaintiff also paid the filing fee required under Labor Code §
2 2699.3. As of the filing of this Complaint, more than 65 days have elapsed since the mailing of
3 Plaintiff's March 3, 2023 notice, and the LWDA has not indicated that it intends to investigate
4 the violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to
5 recover penalties for himself and other Aggrieved Employees pursuant to Labor Code § 2699.3.

6 45. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect his interests and that of the Aggrieved Employees, and to assess and collect the civil
8 penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney's fees
9 and costs pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

10 **PRAYER FOR RELIEF**

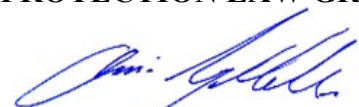
11 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, and
12 as a private attorney general, prays for relief and judgment against Defendants, jointly and
13 severally, as follows:

14 **As to the First Cause of Action**

- 15 1. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor
16 Code;
17 2. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
18 210, 558, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California Labor Code
19 and/or other applicable statutes; and
20 3. For such other relief as the Court deems just and proper.

21 Dated: May 8, 2023

22 **PROTECTION LAW GROUP**

23 By: 

24 Heather Davis
25 Amir Nayebdadash
26 Priscilla Gamino
27 *Attorneys for Plaintiff*
28 ERIC DANIEL MIZE