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SOLEDAD ROCHA

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
UNLIMITED JURISDICTION

SOLEDAD ROCHA, an individual;

Plaintiff;

vs.

ROBERT PEREZ, an individual;
SECURECARE, INC., a California stock
corporation; COTA, INC., a California stock
corporation; MASSAGE ENVY POINT LOMA;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2023-00016088-CU-WT-CTL

COMPLAINT

Plaintiff SOLEDAD ROCHA hereby alleges the following:

PARTIES

1. Plaintiff SOLEDAD ROCHA ("Plaintiff") is, and at all times mentioned herein, was an individual residing in San Diego, CA.

2. Defendant ROBERT PEREZ ("Perez") is, and at all times mentioned herein, was an individual residing in San Diego, CA. Plaintiff is informed and believe and thereon alleges that Perez is a person acting on behalf of Plaintiff's employer as understood under Labor Code section 558.1.

1 3. Defendant SECURECARE, INC. (“Securecare”) is, and at all times mentioned herein,
2 was a California stock corporation. Its registered address is 22760 Deer Run Court, Murrieta, CA
3 92562. Plaintiff is informed and believe and thereon alleges Securecare is one of the legal entities that
4 employed Plaintiff.

5 4. Defendant COTA, INC. (“Cota”) is, and at all times mentioned herein, was a California
6 stock corporation. Its registered address is 2917 Babbling Brook Road, Chula Vista, CA 91914. Plaintiff
7 is informed and believe and thereon alleges Cota is one of the legal entities that employed Plaintiff.

8 5. Defendant MASSAGE ENVY POINT LOMA (“Massage Envy”) is located at 18402 N.
9 19th Avenue #264, Phoenix, AZ 85023. Plaintiff is unsure of the exact nature of this defendant's legal
10 entity and will amend the complaint once it is known. Plaintiff is informed and believes and thereon
11 alleges Massage Envy is one of the legal entities that employed Plaintiff.

12 6. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES
13 1 through 100 (the “DOE Defendants”) and therefore, sues these defendants by such fictitious
14 names. Plaintiff will amend the Complaint to insert DOE Defendants’ true names and capacities when
15 ascertained. Plaintiff is informed and believes and therefore alleges that each of these fictitiously named
16 defendants is legally responsible for the events and happenings referred to herein, and legally hereinafter
17 alleged were proximately caused by the acts of such defendants, and each of them.

18 7. Perez, Securecare, Cota, Massage Envy, and DOE Defendants, will be collectively
19 referred to as “Defendants” hereafter.

20 8. Plaintiff is informed and believes and, on that basis, alleges that at all times mentioned
21 herein, each of the defendants was the agent and employee of the remaining defendants, and was acting
22 within the scope and purpose of such agency and employment in doing the acts herein alleged.

23 9. Plaintiff is informed and believes and thereon alleges that some of the entities named as
24 defendants herein including, but not limited to, Securecare, Cota, Massage Envy, and DOE Defendants
25 (hereinafter occasionally collectively referred to as the “Alter Ego Entities”), and each of them, were at
26 all times relevant the alter egos of Perez and DOE Defendants (hereinafter occasionally collectively
27 referred to as the “Individual Defendants”) by reason of the following:
28

- 1 a. Plaintiff is informed and believes and thereon alleges that said Individual
2 Defendants, at all times herein mentioned, dominated, influenced, and controlled
3 each of the Alter Ego Entities and the officers thereof as well as the business,
4 property, and affairs of each of said corporations.
- 5 b. Plaintiff is informed and believes and thereon alleges that, at all times herein
6 mentioned, there existed and now exists a unity of interest and ownership between
7 said Individual Defendants and each of the Alter Ego Entities; the individuality
8 and separateness of said Individual Defendants and each of the Alter Ego Entities
9 have ceased.
- 10 c. Plaintiff is informed and believes and thereon alleges that, at all times since the
11 incorporation of each, each Alter Ego Entities has been and now is a mere shell
12 and naked framework which said Individual Defendants used as a conduit for the
13 conduct of their personal business, property, and affairs.
- 14 d. Plaintiff is informed and believes and thereon alleges that, at all times herein
15 mentioned, each of the Alter Ego Entities was created and continued pursuant to a
16 fraudulent plan, scheme and device conceived and operated by said Individual
17 Defendants, whereby the income, revenue and profits of each of the Alter Ego
18 Entities were diverted by said Individual Defendants to themselves.
- 19 e. Plaintiff is informed and believes and thereon alleges that, at all times herein
20 mentioned, each of the Alter Ego Entities was organized by said Individual
21 Defendants as a device to avoid individual liability and for the purpose of
22 substituting financially irresponsible corporations in the place and instead of said
23 Individual Defendants, and each of them, and accordingly, each Alter Ego Entities
24 was formed with capitalization totally inadequate for the business in which said
25 entities was engaged.

26 10. By virtue of the foregoing, adherence to the fiction of the separate corporate existence of
27 each of the Alter Ego Entities would, under the circumstances, sanction a fraud and promote injustice in
28 that Plaintiff would be unable to realize upon any judgment in her favor.

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

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

15. Plaintiff was an employee of Defendant

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

18. On January 26, 2023, and on February 14, 2023, Plaintiff attended offsite training sessions with her coworkers. She was promised that she would be paid for these events.

20. However, Plaintiff was never given a specific commission structure, and frequently Defendants would unilaterally alter the amount of commission employees received.

COMPLAINT

1 22. Beginning in 2020, Plaintiff was told by her manager “Megan” that Plaintiff needed to
2 clock out if she had empty time on her calendar in between esthetician appointments. However, she was
3 still required to be on or close to the company’s premises in case a customer came in for a walk-in
4 appointment. Plaintiff was required to immediately return if a customer called in and booked their
5 services. Defendants did not compensate Plaintiff for being on call during these periods.

6 23. Due to Defendants’ lean scheduling practices, the front desk receptionist would be left
7 alone for an entire shift most days. Plaintiff had to be available for answering phone calls, checking
8 customers in and out, and was told she could not leave the front desk unattended. Plaintiff’s shifts were
9 long enough that she was entitled to a meal break. However, she was not provided with an opportunity
10 to take the break because of Defendants’ policy.

11 24. Plaintiff accurately and correctly submitted timesheets showing that she did not take a
12 meal break. Plaintiff later realized that after she submitted her timesheets without any breaks logged, a
13 thirty-minute unpaid break would be unilaterally entered into her timesheet without her consent by
14 management.

15 25. Furthermore, Plaintiff was not aware of any policy that would allow her to take ten-
16 minute rest breaks as required by law. At most, Plaintiff would typically take only one rest break in the
17 morning to get a coffee from a local business. The rest of the time, she was required to be at the front
18 desk. Plaintiff would consistently work over six and a half hours as well.

19 26. In February 2023, Plaintiff complained to one manager, Ashley, about the missing time
20 from her January 2023 and February 2023 training sessions. Plaintiff also raised issues with some recent
21 changes in the commission structure and breaks being automatically added to her timesheet.

22 27. At the beginning of March 2023, Plaintiff spoke with her coworkers and discussed how
23 she was missing time from her timesheet for meal breaks that she never took and how she never received
24 payment for the training sessions done in January and February 2023.

25 28. On March 7, 2023, Plaintiff told her manager, Autumn, that multiple coworkers were
26 reporting missing time from their pay checks and were not paid for the training sessions. Autumn said
27 she would discuss this with Ashley and the other managers.
28

29. On March 13, 2023, Autumn informed Plaintiff that she would not receive pay for the January training session since it was too long ago to enter into their books now. Autumn informed Plaintiff that she would receive pay for the February training session.

30. On March 23, 2023, less than two weeks after discussing pay issues with her manager, Plaintiff was terminated by Defendants for “poor performance.” Plaintiff is informed and believes and thereon alleges that “poor performance” was a pretextual reason for termination. Rather, Plaintiff believes Defendants terminated her because she complained about her pay (missing hours, edited timesheets, etc.) and assisted other co workers in their pay issues as well.

FIRST CAUSE OF ACTION

Failure to Pay Wages

(Against all Defendants)

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

32. California law requires an employer to pay its employees for all hours worked.

33. Defendants failed to maintain accurate records of the hours actual worked by Plaintiff as they required her to clock out when she was not fully relieved of all duties and as they failed to compensate her for all hours worked.

34. Because of Defendants' conduct, Plaintiff did not receive compensation for all time actually worked for Defendants.

35. Defendants' failure to pay permits a civil suit to recover wages due to Plaintiff under Labor Code sections 204, 218.5, 510 and 1194, plus recovery of interest.

36. As a direct and proximate cause of Defendants' conduct, Plaintiff has been injured and is entitled to unpaid wages, interest, attorney fees, and other statutory penalties.

SECOND CAUSE OF ACTION

Liquidated Damages pursuant to Labor Code section 1194.2

(Against all Defendants)

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

38. Labor Code section 1194.2 states:

1 In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages
2 because of the payment of a wage less than the minimum wage fixed by an
3 order of the commission or by statute, an employee shall be entitled to
4 recover liquidated damages in an amount equal to the wages unlawfully
5 unpaid and interest thereon.

6 39. When Plaintiff worked for Defendants, the minimum wage for Defendants' employees in
7 California was \$16.30.

8 40. When minimum wage was \$16.30, Plaintiff worked several hours and received \$0.00 in
9 pay per hour. This would happen when Plaintiff was not paid for all time worked or when her managers
10 would unilaterally subtract time from her timesheets.

11 41. Plaintiff is entitled to liquidated damages in addition to compensation for her wages.

12 **THIRD CAUSE OF ACTION**

13 **Failure to Provide Meal Breaks**

14 **(Against all Defendants)**

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

16 43. Labor Code section 512 states an employer shall not employ an employee for a work
17 period of more than five (5) hours per day without providing the employee with a meal period of not less
18 than thirty (30) minutes. The employee must be completely free from work during this meal break.
19 Failing to provide a meal break entitles the employee to one (1) additional hour of pay at the employee's
20 regular rate of compensation for each workday that the break was not provided. (Lab. Code § 226.7; see
21 also 8 Cal. Code. Regs. §11070, subsec. 11.)

22 44. Defendants failed to provide Plaintiff an opportunity to take a meal break as described
23 above.

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

26 46. Defendants are liable to Plaintiff for one additional hour of pay at Plaintiff's regular rate
27 of pay for each day that a meal break was not provided, along with costs and attorney's fees.
28

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Rest Breaks**

3 **(Against all Defendants)**

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

5 48. Wage Order 7, section 12, provides:

6 Every employer shall authorize and permit all employees to take rest
7 periods, which insofar as practicable shall be in the middle of each work
8 period. The authorized rest period time shall be based on the total hours
9 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
10 or major fraction thereof . . . Authorized rest period time shall be counted
as hours worked for which there shall be no deduction from wages. (8 Cal.
Code. Regs. §11070, subsec. 12.)

11 49. Failure to provide a rest break entitles the employee to a rest break premium equal to one
12 hour of their regular pay rate in addition to the time they already worked. (Lab. Code § 226.7.)

13 50. Defendants failed to provide Plaintiff an opportunity to take a rest break as required by
14 California law.

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

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

19 **FIFTH CAUSE OF ACTION**

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

21 **(Against all Defendants)**

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

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

25 55. Defendants had failed to pay all wages due to Plaintiff upon termination.

26 56. Labor Code section 203 provides:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 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

1 employee shall continue as a penalty from the due date thereof at the same
2 rate until paid or until an action therefor is commenced; but the wages shall
3 not continue for more than 30 days.

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

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

9 **SIXTH CAUSE OF ACTION**

10 **Failure to Provide Accurate Wage Statements**

11 **(Against all Defendants)**

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

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

15 61. Plaintiff has suffered an injury pursuant to Labor Code section 226(e)(2) by receiving
16 wage statements that did not accurately reflect her time worked, rest break premiums, and meal break
17 premiums.

18 62. Defendants' paystub also fails to accurately list the actual employer or address of the
19 employer.

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

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

24 **SEVENTH CAUSE OF ACTION**

25 **Breach of Contract**

26 **(Against all Defendants)**

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

28 66. Per an oral agreement between Plaintiff and Defendants, Plaintiff was entitled to a certain
amount of commissions for selling services, retail items, and memberships. Defendants provided a "rate

1 sheet” outlining the commissions that should have been paid if certain services, items, and memberships
2 were sold. Plaintiff was not provided with her personal copy of this rate sheet either.

3 67. Despite having a rate sheet and an oral agreement, Defendants would frequently and
4 unilaterally change the commission arrangement. Plaintiff would sell certain services, items, and
5 memberships, believing that she would earn a larger commission. However, when payment of the
6 commissions was due, Defendants would alter the compensation structure and claim that the
7 commissions were changed.

8 68. Plaintiff performed all duties required under this oral agreement by continuing to sell
9 certain items, services, and memberships for the benefit of Defendants.

10 69. Defendants failed to pay commissions as agreed. Defendants’ performance cannot be
11 excused by altering the rate sheet for commissions already earned and owed.

12 70. Defendants have breached the oral contract for commissions between Defendants and
13 Plaintiff.

14 71. Because of Defendants’ breach of the oral contract, Plaintiff is entitled to all owed
15 commissions. Given that these commissions are considered wages in California, Plaintiff is also entitled
16 to compensation of attorney’s fees and costs as well.

17 **EIGHTH CAUSE OF ACTION**

18 **Retaliation**

19 **(Against all Defendants)**

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

21 73. Labor Code section 1102.5(b) prohibits an employer from retaliating against an employee
22 that reports information to a supervisor regarding the employee’s concern that the employer is violating
23 California law.

24 74. Additionally, Labor Code section 1197.5 prohibits an employer from retaliating against
25 an employee for disclosing the employee’s own wages, discussing the wages of others, inquiring about
26 another employee’s wages, or aiding or encouraging any other employee to exercise his or her rights.

27 75. As explained above, Plaintiff complained to her manager about unpaid wages. Plaintiff
28 also encouraged other employees to discuss their pay and make similar complaints to management.

76. Plaintiff's complaints centered on Defendants' illegal conduct of failing to abide by the California Labor Code as previously alleged herein. Plaintiff's actions also constitute protected activity pursuant to Labor Code sections 232 and 232.5.

77. Days after making her complaints and encouraging other employees to make a complaint, Defendants terminated Plaintiff.

78. Defendants' stated reason of "poor performance" was pretextual. Plaintiff's complaints about her wages and discussions with her co-workers was a contributing reason, if not the main reason, for Plaintiff's termination.

79. As a direct result of Defendants' conduct, Plaintiff has suffered economic and non-economic damages. Plaintiff is entitled to compensation, as well as applicable statutory penalties and reimbursement of attorney's fees and costs.

80. Defendants were aware of the probable legal consequences of their conduct and willfully and deliberately failed to remedy or prevent against those consequences. This conduct was ratified or supported by Defendants managing agents. Defendants conduct constituted malice, oppression or fraud such that Plaintiff is entitled to punitive damages under California Civil Code section 3294 in an amount to punish Defendants or to set an example.

NINTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(Against All Defendants)

81. Plaintiff incorporates the allegations set forth above as though set forth fully herein.

82. Plaintiff was an employee of Defendant.

83. Plaintiff made a complaint to a person with authority above her about wages while she was an employee of Defendants.

84. California has a strong public policy to prevent retaliation against employees that raise complaints about their working conditions or pay. This policy has been codified in Labor Code sections 98.6, 232, 232.5, 1102.5, and 1197.5. This fundamental public policy inures to the benefit of the public, and not just the private interests of the employer and employee.

