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similarly situated aggrieved employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SANTA MONICA COURTHOUSE

MAYRA ROXANA XICAY DUARTE,

Plaintiff,

v.

WESTWOOD HEALTHCARE &
WELLNESS CENTRE, LP, and DOES 1 to
50,

Defendants.

Case No.: 23SMCV02600

**FIRST AMENDED COMPLAINT FOR
DAMAGES, PENALTIES AND OTHER
RELIEF:**

Assigned to Department R
Hon. Mark S. Epstein, Judge

Individual Employment Law Claims

1. Failure to Pay Overtime
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Break Violations
5. Failure to Pay Vested Vacation Benefits
6. Failure to Allow Sick Time and Benefits
7. Failure to Pay Wages for All Time Worked
8. Failure to Provide Accurate Wage Statements
9. Failure to Timely Pay Wages at Separation
10. Failure to Produce Employment Records

UCL Claim

11. Unfair Business Practices

PAGA Claim

12. Violation of Labor Laws Giving Rise to
an Action Under the PAGA

Jury Trial Demanded

INTRODUCTORY ALLEGATIONS

1. Plaintiff herein is Mayra Roxana Xicay Duarte (also referred to as “Plaintiff” and/or “Ms. Duarte”). At all times herein, Ms. Duarte was a resident of the County of Los Angeles, State of California.

2. From May of 2019, Ms. Duarte was hired to work at WESTWOOD HEALTHCARE & WELLNESS CENTRE, LP, located at 12121 Santa Monica Blvd., Los Angeles, CA 90025, as a nonexempt employee. Plaintiff started as a Nurse Assistant and continued to work in various capacities, including, but not limited to, a Staffing Coordinator. In her capacity as a Staffing Coordinator she was involved in all facets of the Employer’s offered services, including, but not limited to, scheduling, admissions, coordination of social service, administration, staffing issues, driving patients and making rounds at various hospitals and facilities with her vehicle, and basically covering several positions at the same time. Effective October 21, 2022, Ms. Duarte, under the weight of the stress of the innumerable tasks, requested to return to her Nursing Assistant position effective October 28, 2022. She was, instead, terminated on October 25, 2022 and received her last paychecks on October 28, 2022, for amounts less than owed as fully described.

3. Plaintiff brings this action against WESTWOOD HEALTHCARE & WELLNESS CENTRE, LP and DOES 1 through 50, and said Defendants’ parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively also referred to as “Defendants” or “Employer”). Defendants are in the business of operating a skilled nursing facility, with primary functions in providing medical, continuous nursing, and other health and social services to patients. It also offers patients with subacute care, rehabilitation, skilled nursing care, and therapy in the State of California. Plaintiff will seek to hold all owners, directors, officers and managing agents of his Employer personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1. The business entity Defendants were authorized to do business in the State of California.

4. Defendant business entities were the alter-egos of each and every other entity and

individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. As well, said entities were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist.

5. The Employer and its parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers for the following reasons: 1) Said entities/individuals directly and/or indirectly exercised control over the wages, hours or working conditions of employees; 2) Said entities/individuals had knowledge (either personally or through officers, directors and/or managing agents) of the work employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of employees.

6. Each of the above-referenced Defendants had authority to set Employer's policies, procedures, and practices as well as the authority to hire, transfer, promote, assign, reward, discipline employees or to effectively recommend said actions. Defendants also had responsibility to act on employee grievances and/or to effectively recommend actions on employee grievances. Defendants also had the authority and/or responsibility to direct Plaintiff's daily work activities. The exercise of said authority and responsibility by the above-referenced individual Defendants required the use of their independent judgment.

7. At all times herein and for prior years, Defendants either employed individuals in California and/or were involved in managing businesses and/or employees in California. During those years, Defendants were provided with notifications from various governmental

1 agencies as well as various publications advising them of the requirements of the employment
2 laws referenced here. Accordingly, Defendants knew the obligations owed to employees/joint
3 employees under California law. As such, Defendants' failures to comply with the applicable
4 Labor Code sections, Industrial Wage Orders, regulations, and local laws as described here
5 were done willfully, intentionally and with knowledge of their illegality. Despite said
6 knowledge, said Defendants deliberately approved, established and/or implemented company-
7 wide policies, procedures and/or practices they knew violated California law as set forth here
8 and did so for the purpose of maximizing the profits of and/or their own personal gain
9 (monetary or otherwise) to the illegal detriment of employees, including Ms. Duarte.

10 8. Additionally, based on requirements set forth in the Labor Code and the wage orders
11 applicable to Defendants' business enterprise, at all times herein, Defendants knew it was
12 necessary to possess, and Defendants did possess, a certain level of knowledge and skill in
13 order to comply with the labor and employment laws applicable to their area of business. Said
14 knowledge was vastly superior to that of Defendants' employees. Moreover, Defendants'
15 employees depended on Defendants to know, record and/or track certain information to ensure
16 California labor laws were followed. Such things include the dates and times worked by
17 employees, when wages were owed to employees, the minimum, regular and overtime wages
18 owed to employees, the number of rest and meal breaks the employees were entitled to, when
19 rest and meal breaks were required to be provided, the information required to be accurately
20 reported on employee wage statements, when employees should be paid their final wages, etc.

21 9. The facts linking the fictitiously designated Defendants with the causes of action
22 alleged herein and/or the true names and capacities, whether individual, corporate, partnership,
23 or otherwise of Defendants, DOES 1 through 50, are unknown to Plaintiff(s) at this time, who
24 therefore sue said Defendants by such fictitious names and will seek to amend this Complaint
25 to show their true names and/or capacities when ascertained.

26 10. There is no legally recognized exemption or exception which excused Defendants;
27 therefore, Defendants were without legal justification or excuse for failing to comply with laws.
28

FIRST CAUSE OF ACTION -- FAILURE TO PAY OVERTIME WAGES,
BY PLAINTIFF MAYRA ROXANA XICAY DUARTE AGAINST ALL DEFENDANTS

11. Plaintiff incorporates paragraphs 1 through 10 of this First Amended Complaint.

12. Pursuant to Labor Code § 510 and the applicable Industrial Wage Orders, Defendants were required to pay Plaintiff as well as other non-exempt employees overtime pay as follows:

a. For works in excess of 8 hours in one workday, no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 8 hours up to and including 12 hours in one workday.

b. For work in excess of 12 hours in one workday, no less than twice the employee's regular rate of pay.

c. For work in excess of 40 hours in any one workweek, no less than one and one-half times the employee's regular rate of pay for all hours in excess of 40 hours.

13. At all times during the statute of limitations period applicable to this cause of action, Defendants, and each of them, willfully, knowingly, and intentionally failed to calculate and compensate Ms. Duarte the overtime wages per Labor Code § 510 and/or applicable Industrial Wage Order. Specifically, Defendants unfairly rounded Ms. Duarte's work hours and/or otherwise failed to include all the time she worked in calculating the wages that were owed for each pay period. Thereby, Plaintiff was denied overtime wages.

14. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

SECOND CAUSE OF ACTION -- FAILURE TO PAY MINIMUM WAGES,
BY PLAINTIFF MAYRA ROXANA XICAY DUARTE AGAINST ALL DEFENDANTS

15. Plaintiff incorporates paragraphs 1 through 10 of this First Amended Complaint.

16. At all times herein, pursuant to Labor Code § 1182.12, applicable Industrial Wage Orders, and local ordinances, Defendants were required to pay Ms. Duarte and their other non-exempt employees at least the minimum hourly wage.

17. Defendants willfully, knowingly, and intentionally failed to calculate and compensate Ms. Duarte the minimum wages for all the hours worked, including but not limited to time not

1 included in wage statements due to unfair rounding practices, off the clock work and time
2 Plaintiff was required to clock in/out for rest and/or meal breaks, etc.

3 18. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set
4 forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

5 **THIRD CAUSE OF ACTION -- FAILURE TO PROVIDE MEAL PERIODS OR**
6 **PREMIUM PAY, BY PLAINTIFF MAYRA ROXANA XICAY DUARTE**
7 **AGAINST ALL DEFENDANTS**

8 19. Plaintiff incorporates paragraphs 1 through 10 of this First Amended Complaint.

9 20. At all times herein, pursuant to Labor Code § 512 and the applicable Wage Orders, an
10 employer may not employ an employee to work more than a five hours per day without
11 providing the employee with a thirty-minute meal break within the first five hours.

12 21. Labor Code § 512 and the applicable Wage Order further provide that an employer may
13 not employ an employee for a work period of more than ten hours per day without providing
14 the employee with a second meal period of not less than 30 minutes. California law also
15 requires that for a meal period to qualify as a valid meal period under the law, the meal period
16 must be timely, off-duty, unrestricted, and uninterrupted.

17 22. At all times during the statute of limitations period applicable to this cause of action,
18 Defendants either deprived Ms. Duarte of taking the meal period(s) required each workday
19 under California law, required Plaintiff to take her meal periods after their fifth hour of work,
20 restricted her meal periods, and/or interrupted her meal periods. As a result, Defendants were
21 required by Labor Code § 226.7 and/or the applicable IWC Wage Order to pay Plaintiff
22 "premium pay", i.e., one (1) hour of pay at their regular rate of pay for each workday.

23 23. Nevertheless, during the time that Ms. Duarte was employed by Defendants, Defendants
24 failed to provide meal periods and also failed to pay Plaintiff the premium pay.

25 24. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set
26 forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

**FOURTH CAUSE OF ACTION -- FAILURE TO PROVIDE REST PERIODS OR
PREMIUM PAY, BY PLAINTIFF MAYRA ROXANA XICAY DUARTE
AGAINST ALL DEFENDANTS**

25. Plaintiff incorporates paragraphs 1 through 10 of this First Amended Complaint.

26. At all times herein, pursuant to the California Labor Code, the applicable Industrial Wage Order, and/or applicable regulation, employers must authorize and permit employees to take paid rest periods at the rate of 10 minutes net rest time per four hours or major fraction thereof (unless the total work time is less than 3 ½ hours). So far as practical, the mandatory rest breaks must be provided in the middle of each work period of the workday. And, the rest break must be paid, timely, off-duty, unrestricted, and uninterrupted.

27. Ms. Duarte regularly worked more than 6 hours a day, entitling her to two 10-minute rest breaks -- one in the middle of her first work period of each workday and one in the middle of her second work period during each workday.

28. In violation of California law, Defendants either 1) deprived Ms. Duarte of taking the rest periods required under California law, 2) required her to take his rest breaks too early or too late (even though it was practical for Plaintiff to take his rest breaks in the middle of each work period), 3) restricted the rest breaks and/or 4) interrupted the rest breaks.

29. In violation of Labor Code § 226.7, Defendants also failed to pay Ms. Duarte one (1) hour of pay at her regular rate of pay for each workday that a rest break was not provided, was provided too early or too late, was on-duty, was restricted, and/or was interrupted.

30. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

**FIFTH CAUSE OF ACTION – FAILURE TO PAY VESTED VACATION BENEFITS,
BY PLAINTIFF MAYRA ROXANA XICAY DUARTE AGAINST ALL DEFENDANTS**

31. Plaintiff incorporates paragraphs 1 through 10 of this First Amended Complaint.

32. As required by Labor Code § 227.3, unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation

time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.

33. Defendants have violated and continue to violate Labor Code § 227.3 by failing to pay Plaintiff her vested vacation time at the time of her separation from Defendants.

34. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

**SIXTH CAUSE OF ACTION – FAILURE TO PROVIDE/PERMIT USE OF/PAY OUT
ACCRUED SICK TIME, BY PLAINTIFF MAYRA ROXANA XICAY DUARTE
AGAINST ALL DEFENDANTS**

35. Plaintiff hereby incorporates paragraphs 1 through 10 of this First Amended Complaint.

36. Pursuant to Labor Code §246, employers in California are required to provide employees with sick leave time that accrues at the rates mandated or other applicable law. An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date as set forth in the Code, whichever is later, subject to the use and accrual limitations set forth. Said Labor Code also requires employers to notify employees of the amount of their accrued sick leave either in their wage statements or in a separate writing provided on the designated pay date with the employee's payment of wages.

37. Pursuant to Labor Code § 233, employers are also required to permit employees to use accumulated sick time for any of the reasons specified in Labor Code § 246.5 including the following: diagnosis, care or treatment of an existing health condition of (or preventive care for) an employee or an employee's family member. Labor Code § 246.5 specifically prohibits an employer from denying employees the right to use accrued sick days or attempting to exercise their right to use accrued sick days.

38. Pursuant to Labor Code § 246 as well, an employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation.

Defendants were also duty bound to provide Ms. Duarte with written notice that sets forth the amount of paid sick leave available, or paid time off leave Defendants provided in lieu of sick leave, for use on either Ms. Duarte's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the Plaintiff's payment of wages.

39. Defendants failed to confer Code compliant sick leave benefits to Plaintiff.

40. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

SEVENTH CAUSE OF ACTION -- FAILURE TO PAY WAGES/

TIMELY PAY WAGES FOR ALL TIME WORKED,

BY PLAINTIFF MAYRA ROXANA XICAY DUARTE AGAINST ALL DEFENDANTS

41. Plaintiff incorporates paragraphs 1 through 41, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34 and 35, of this First Amended Complaint.

42. At all times herein, pursuant to Labor Code § 200, wages in California include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Wages under Labor Code § 200 also include vested benefits such as premium pay for missed, untimely, on-duty, restricted and/or interrupted meal periods and/or rest breaks.

43. All non-exempt employees must be paid all earned wages within the timeframes set forth in Labor Code § 204.

44. Defendants, and each of them willfully, knowingly, and intentionally failed to pay Ms. Duarte for all time worked whether or not reported and for unfairly rounded punch-in/out times.

45. Since such wages were not paid, said wages were also not paid in accordance with the time frames set forth in Labor Code § 204.

46. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

**EIGHTH CAUSE OF ACTION -- FAILURE TO PROVIDE ACCURATE WAGE
STATEMENTS, BY PLAINTIFF MAYRA ROXANA XICAY DUARTE
AGAINST ALL DEFENDANTS**

47. Plaintiff incorporates paragraphs 1 through 45, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, 35, 40 and 41 of this First Amended Complaint.

48. At all times herein, pursuant to Labor Code § 226(a), each time an employer pays wages to an employee, the employer is required to furnish the employee with an “accurate itemized statement in writing” that itemizes the following: 1) gross wages earned; 2) total hours worked; 3) the number of piece-rate units earned and the applicable piece rates; 4) all deductions; 5) net wages earned; 6) the inclusive dates for which the employee is being paid; 7) name of the employee and only the last 4 digits of his/her social security number or employee I.D. number; 8) the name and address of the legal entity of the employer; and 9) all hourly rates in effect to the pay period and corresponding number of hours worked at each hourly rate.

49. Defendants violated Labor Code §226(a) by not providing Ms. Duarte with Code compliant wage statements at all times relevant here.

50. As a result of the above statutory deficiencies in the wage statements provided to Mr. Cornejo, Plaintiff was not reasonably able to promptly and easily determine the information intended to be communicated to Ms. Duarte by the Employer. A reasonable person would also have been unable to readily discern the above information without reference to other documents or information.

51. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - “Individual Causes of Action for Labor Law Violations.”

**NINTH CAUSE OF ACTION FOR FAILURE TO PAY WAGES OWED
AT TIME OF SEPARATIONBY PLAINTIFF MAYRA ROXANA XICAY DUARTE
AGAINST ALL DEFENDANTS**

52. Plaintiff incorporates paragraphs 1 through 50, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, 35, 40, 41, 46 and 47 of this First Amended Complaint.

53. Pursuant to Labor Code § 201, employers are required to immediately pay employees all wages due at the time employees are discharged. Additionally, pursuant to Labor Code § 202, if an employee gives at least 72-hours previous notice of their intent to quit/retire, the employer is required to pay the employee all wages due the time the employee quits/retires. Pursuant to Labor Code § 202, if an employee does not give 72-hours previous notice of their intention to quit/retire, the employer is required to pay the employee all wages due the employee within 72-hours of the time the employee leaves employment.

54. In violation of Labor Code §§ 201-202, Ms. Duarte was not timely paid all wages due at the time of his separation from Defendants even though said Defendants knew such payment was owed and it was within said Defendants' control to make such payment in accordance with Labor Code §§ 201-202. Plaintiff was not paid the overtime wages, regular time wages, minimum wages, premium wages as well as vacation and accrued sick benefits that were owed to them at the time of separation of Ms. Duarte from Defendants. Defendants thereby willfully violated Labor Code §§ 201-202 and the applicable IWC Wage Order(s).

55. Because Ms. Duarte was not paid all the wages owed in accordance with the time frames set forth in Labor Code §§ 201-202, pursuant to Labor Code § 203, Defendants were required to pay Plaintiff her regular wages from the due date thereof at the same rate until paid, up to a maximum of thirty (30) days of pay.

56. Plaintiff is entitled to recover the wages, damages, penalties, awards and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

TENTH CAUSE OF ACTION -- FAILURE TO PROVIDE EMPLOYMENT
RECORDS, BY PLAINTIFF MAYRA ROXANA XICAY DUARTE
AGAINST ALL DEFENDANTS

57. Plaintiff hereby incorporates paragraphs 1 through 10 of this First Amended Complaint.

58. At all times herein, pursuant to Labor Code § 226(b), employers are required to afford their current and former employees the right to inspect or copy all records pertaining to their employment upon reasonable notice.

59. Pursuant to Labor Code § 226(c), an employer who receives a written or oral request to

inspect or copy records must comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. Pursuant to Labor Code § 226(b), if the employer provides copies of the records, the actual cost of reproduction may be charged to the employee. Pursuant to Labor Code §226(b), on two separate instances, on November 29, 2022 and on December 13, 2022, Ms. Duarte, through her legal counsel, (via written correspondence/certified letter with return receipt) requested all records pertaining to Plaintiff's employment with Defendants. The request was Code compliant and time sensitive. Defendants received the requested production communications but failed to provide any documents in response.

60. Plaintiff is entitled to recover the damages, penalties, awards, and other remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

ELEVENTH CAUSE OF ACTION -- UNFAIR BUSINESS PRACTICES,

BY PLAINTIFF MAYRA ROXANA XICAY DUARTE AGAINST ALL DEFENDANTS

61. Plaintiff incorporates paragraphs 1 through 59, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, 35, 40, 42, 46, 47, 51, 52, 56, and 57 of this First Amended Complaint.

62. Business and Professions Code §17200 provides as applicable ". . . [U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice"

63. Business and Professions Code §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties available under all other laws of this state."

64. Business and Professions Code §17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

65. Defendants have engaged in unlawful business acts or practices, including those set forth in the preceding paragraphs of the First Amended Complaint, and, thereby, have wrongfully deprived Plaintiff from the minimum working standards and conditions under the California Labor Code, the Code of Regulations and/or applicable IWC Wage Order(s), as set forth herein.

66. Defendants have also engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, including, but not limited to:

- a. Requiring employees (including Plaintiff) to perform labor without paying/timely paying them the requisite compensation (including regular wages, overtime wages, minimum wages).
- b. Not providing employees (including Plaintiff) with the requisite meal periods and/or rest breaks or the applicable premium pay.
- c. Not paying/timely paying employees (including Plaintiff) all the wages owed them at the time of their separation from employment.
- d. Not providing employees (including Plaintiff) with accurate wage statements.
- e. Not providing employees with the seating required under the applicable IWO.

67. Defendants' use of such illegal and unfair practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors who comply with the above-referenced employment laws and regulations.

68. Defendants have engaged in said unlawful and unfair business practices on a continuous basis for many years up until the present time. As a result, Plaintiff has suffered injury in fact and has lost money and/or property as described herein.

69. As a direct and proximate result, Defendants are required to pay restitution to restore any and all monies withheld, acquired and/or converted by Defendants. If Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ, and utilize the employment practices outlined. Therefore, the court is requested to issue a permanent injunction prohibiting Defendants from engaging in the foregoing conduct, and as necessary, the court is requested to appoint a receiver.

70. Plaintiff is entitled in addition to an award of attorneys' fees and costs of suit on this cause of action pursuant to Code of Civil Procedure §1021.5.

71. Under California law, Plaintiff is entitled to penalties, awards, and remedies set forth in the Prayer for Damages - "Unfair Business Practices Cause of Action" are also being sought.

**TWELFTH CAUSE OF ACTION -- VIOLATION OF LABOR LAWS GIVING RISE
TO AN ACTION PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT
(PAGA) BY PLAINTIFF MAYRA ROXANA XICAY DUARTE
AGAINST ALL DEFENDANTS**

72. Plaintiff incorporates paragraphs 1 through 59, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, 35, 40, 42, 46, 47, 51, 52, 56, and 57 of this First Amended Complaint.

73. Plaintiff brings this cause of action pursuant to the Private Attorneys General Act (Labor Code §2699) on behalf of himself and all aggrieved employees as described as follows: All non-exempt employees (including Plaintiff who have worked for Defendants in California during the applicable statute of limitations period.)

74. Plaintiff has exhausted all statutory prerequisites to filing a Private Attorneys General Action in this matter by providing written notice to the Labor and Workforce Development Agency on or about May 15, 2023, that Defendants had violated and continued to violate provisions of the California Labor Code. Pursuant to the PAGA, said filing resulted in a tolling of the applicable statute of limitation(s).

75. At least sixty-five days has passed from the time that Plaintiff provided written notice (by online submission to the Labor and Workforce Development Agency and by certified mail to Defendants) that Defendants had violated and continued to violate provisions of the California Labor Code. Plaintiff has not received notice from the LWDA that it intends to prosecute an action against Defendants. Therefore, as statutorily permitted pursuant to Labor Code § 2699.3, Plaintiff has the right to commence a Private Attorneys General Action (PAGA) under Labor Code § 2698 et seq.

Count One – Misclassification of Employees as Exempt Employees

76. At all times that Plaintiff (and other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) provided work for the Defendants, they were non-exempt employees of the Defendants for the following reasons:

- a. They were either not paid a salary or the salary they were paid was not at least twice the minimum wage for full-time employment.

b. Their primary duties did not consist of administrative, executive, or professional tasks.

c. Their job duties did not involve the use of discretion or independent judgment.

d. Other reasons as set forth in the applicable Industrial Wage Order.

77. Based on the above and pursuant to California law, at all times herein, Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) were non-exempt employees rather than exempt employees of Defendants.

78. Misclassifying aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) as exempt employees was done willfully by Defendants for the purpose of maximizing the business profits of the Defendants to the illegal detriment of said employees. This was accomplished by depriving said employees of employment benefits that employers owe to non-exempt employees (but not exempt employees) under California law including the following: overtime wages, legally compliant rest breaks and meal periods, legally compliant and accurate wage statements, etc.

79. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

Count Two – Failure to Pay Overtime Wages

80. As applicable under California law and set forth in the First Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) is entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Three – Failure to Pay Minimum Wages

81. As applicable under California law and set forth in the Second Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) is entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.

Count Four – Failure to Provide Meal Periods/Premium Pay

82. As applicable under California law and set forth in the Third Cause of Action, Plaintiffs (on behalf of themselves and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Five – Failure to Provide Rest Breaks/Premium Pay

83. As applicable under California law and set forth in the Fourth Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Six – Failure to Provide Suitable Seating Accommodations

84. Defendants have adopted and continue to adopt a custom and practice of failing to provide its current and former Employees (including Ms. Duarte) with: 1) Suitable seating when the nature of the Employees’ work reasonably permits use of seats and 2) Suitable seating in reasonable proximity to Employee’s work areas for use by Employees when a) they are not engaged in active duty, b) their work requires standing and c) such seats would not interfere with the performance of their duties. As such, Defendants are in violation of California law. In accordance, Plaintiff (on behalf of himself and other aggrieved employees) are entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Seven – Failing to Pay / Timely Pay Wages

85. As applicable under California law and as set forth in the Seventh Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) is entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Eight – Failure to Provide Accurate Wage Statements

86. As applicable under California law and set forth in the Eighth Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) is entitled to recover the other penalties,

awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Nine – Failure to Pay Wages Owed at Time of Separation

87. As applicable under California law and set forth in the Ninth Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) is entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Ten – Failure to Pay Vested Vacation Benefits

88. As applicable under California law and set forth in the Fifth Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) is entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Eleven – Failure to Allow Sick Time and Benefits

89. As applicable under California law and set forth in the Sixth Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) is entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

Count Twelve – Failure to Provide/Produce Employment Records

90. As applicable under California law and as set forth in the Tenth Cause of Action, Plaintiff (on behalf of himself and other aggrieved employees) is entitled to recover the other penalties, awards, remedies, and other relief set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Re PAGA Cause of Action.”

PRAYER FOR DAMAGES, AWARDS AND OTHER RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them:

Individual Causes of Action (First through Tenth) for Labor Law Violations

1. Unpaid/underpaid wages (including but not limited to regular wages, overtime wages, vacation and sick leave benefits, and/or minimum wages) owed to Plaintiff for \$75,000 or in an amount as proven at the time of the trial.

2. All premium pay/wages owed to Plaintiff for untimely, missed, or interrupted meal periods and/or rest breaks for \$75,000 or in an amount as proven at the time of the trial.
3. Continuing wages to the fullest extent under Labor Code § 203 in the amount of \$5,000 or in an amount as proven at the time of the trial.
4. All statutory penalties under the Labor Code for an individual employee to recover from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s) and/or applicable local laws/ordinances which were violated with respect to Plaintiff's employment as alleged herein, in the amount of \$15,000 or in an amount as proven.
5. All liquidated damages in the amount of \$15,000 or in an amount as proven.
6. All equitable relief permitted under California law, according to proof.
7. Attorney's fees to the fullest extent permitted under California law, according to proof.
8. Prejudgment and post-judgment interest as well as costs and other relief under the law.

Unfair Business Practices Cause of Action

1. Full restitution of all monies withheld, acquired and/or converted by Defendants by means of unlawful and/or unfair business practices prohibited by Bus. & Prof. Code § 17200, in the amount of \$75,000 or in an amount as proven at the time of the trial.
2. A preliminary and permanent injunction prohibiting Defendants from engaging in the unlawful and/or unfair employment practices complained of herein.
3. The appointment of a receiver to establish the total monetary relief sought.
4. Attorneys' fees and, pre and post judgment interest, costs, and other relief.

PAGA Cause of Action

1. All civil penalties recoverable under the PAGA for violations of the Labor Code, applicable Industrial Wage Order(s) and/or applicable regulation, local law/ordinance, according to proof. To the extent required by the PAGA, the civil penalties recovered on behalf of all aggrieved employees shall be distributed seventy-five percent (75%) to the LWDA and the remaining twenty-five percent (25%) distributed to Plaintiff and all similarly aggrieved employees.
2. Attorneys' fees and/or costs as permitted by law for PAGA violations, and only as to

those causes of action permitted under the Labor Code, the applicable Industrial Wage Order and/or other applicable California law and according to proof; and

3. Prejudgment, post judgment and such other relief as permitted by law.

DATED: July 17, 2023

MOORADIAN LAW, APC

Zorik Mooradian

By: _____
Zorik Mooradian,
Andrina G. Hanson,
Nanor C. Kamberian,
Attorneys for Plaintiff
MAYRA ROXANA XICAY DUARTE

DEMAND FOR A JURY TRIAL

Plaintiff, MAYRA ROXANA XICAY DUARTE, hereby demands a jury trial.

DATED: July 17, 2023

MOORADIAN LAW, APC

Zorik Mooradian

By: _____
Zorik Mooradian,
Andrina G. Hanson,
Nanor C. Kamberian,
Attorneys for Plaintiff
MAYRA ROXANA XICAY DUARTE