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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

Attorneys for Plaintiff Kobi Keithley, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

KOBI KEITHLEY, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

MICHIGAN HOUSE, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: **23CECG03558**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 204, 226(a), 226.7, 227.3, 246,
510, 512, 1174, 1174.5, 1175, AND 1194
AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 210, 226.3, AND 558**

1 Plaintiff KOBİ KEITHLEY ("Plaintiff"), on behalf of herself and others as an "aggrieved
2 employee" under the Labor Code Private Attorneys General Act of 2004, complains of MICHIGAN
3 HOUSE, INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter
4 referred to as "Defendants") as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other California employees who currently work or formerly worked for Defendants
9 ("Aggrieved Employees").

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the "liability period"), Defendants have had
13 consistent policies of:

14 a. Requiring Plaintiff and other non-exempt Aggrieved Employees to be on-call,
15 under Defendants' control, with substantial restrictions, without pay. Defendants did not
16 compensate them for time spent on-call, notwithstanding the fact they were subject to
17 Defendants' control during this on-call time. An employer is obligated to pay the wages of an
18 hourly employee for all time that the employee is under the control of her employer, and this
19 includes all the time the employee is suffered or permitted to work, whether or not required
20 to do so. When Plaintiff and other non-exempt Aggrieved Employees were on-call, they were
21 under the control of Defendants and required to be compensated for all hours worked.
22 Defendant, however, failed to do so. These instances deprived Plaintiff and other non-exempt
23 Aggrieved Employees of significant hours worked and minimum and overtime wages due,
24 and constitute violations of Labor Code §§ 510, 558, 1194 and IWC Wage Order 5-2001;

25 b. Failing to properly compute bonuses, shift differential wages, and/or other
26 non-base hourly wages earned by Plaintiff and other non-exempt Aggrieved Employees into
27 their regular rate of pay for purposes of paying them meal and rest period premiums, overtime
28 wages, vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§

226.7, 246, 510, 512, 558, and 1194. Defendants paid Plaintiff and other non-exempt Aggrieved Employees bonuses, shift differential wages, and/or other non-base hourly wages; however, Defendants failed to properly blend these forms of pay, and instead pay Plaintiff and other non-exempt Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages, and sick pay wages based only on the base hourly rate of pay, thus depriving Plaintiff and other non-exempt Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194;

c. Failing to timely pay all wages due to Plaintiff and other non-exempt Aggrieved Employees during their employment, in violation of Labor Code §§ 204 and 210. Defendants paid Plaintiff and other Aggrieved Employees on a semi-monthly basis, but failed to issue them all their wages within ten calendar days of the conclusion of the payroll period, as required by Labor Code § 204(a). This subjects Defendants to penalties as authorized by Labor Code § 210;

d. Failing to pay correct premium wages to Plaintiff and other non-exempt Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001. Plaintiff and other non-exempt Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Plaintiff and other non-exempt Aggrieved Employees were frequently too busy to take a rest period. When they were able to take a rest period, they were oftentimes late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage Order No. 5-2001;

e. Failing to pay correct premium wages to Plaintiff and other non-exempt Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001. Plaintiff and other non-exempt Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted,

1 30-minute meal period for every shift worked that exceeded ten hours, but were not paid
2 premium wages of one hour's pay for each missed first or second meal period. When they
3 were able to take a meal period, they are oftentimes late, cut short, or on-duty. This violates
4 Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001;

5 e. Failing to maintain and produce records in accordance with Labor Code §§
6 1174, 1174.5, and 1175. Plaintiff requested her employee file and Defendants failed to timely
7 produce it. This violates Labor Code §§ 1174, 1174.5, and 1175;

8 f. Failing to provide Plaintiff and other Aggrieved Employees with wage
9 statements that fully and accurately itemized the requirements set forth in Labor Code §§
10 226(a) and 226.3. Plaintiff and other non-exempt Aggrieved Employees were not paid all
11 wages due, as stated above. As such, the wage statements provided by Defendants failed to
12 accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3,
13 total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in
14 violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during
15 the pay period and the corresponding numbers of hours worked at each rate, in violation of
16 Labor Code §§ 226(a)(9) and 226.3; and

17 g. Failing to pay Plaintiff and other non-exempt Aggrieved Employees all wages
18 due, including all accrued, but unused vacation wages, at the separation of their employment
19 based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above,
20 Plaintiff and other non-exempt Aggrieved Employees were not paid all wages due during the
21 course of their employment and, as a result of this failure, they were not timely paid all wages
22 due at the separation of their employment. This violates Labor Code §§ 201-202 and 227.3
23 and is alleged on behalf of Plaintiff and certain non-exempt Aggrieved Employees no longer
24 employed by Defendants.

25 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
26 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.
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4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose throughout California, including in Fresno County.

III.

PARTIES

A. Plaintiff

5. Plaintiff KOBİ KEİTHLEY was employed by Defendants from March 2021 to July 2021 and again from October 2021 to May 2023 as a non-exempt employee in Fresno County, California.

B. Defendant

6. Defendant MICHIGAN HOUSE, INC. is a California corporation that employed Plaintiff and Aggrieved Employees in Fresno County, California.

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

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

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

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IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1175, AND
1194 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 210, 226.3, AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties 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 §§ 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1175, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 210, 226.3, and 558.

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

14. On June 21, 2023, Plaintiff sent a letter, 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 June 21, 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.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and

4. Such other and further relief as this Court may deem just and proper.

Dated: August 30, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
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