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Superior Court of California
Sacramento
10/26/2023
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By _____, Deputy
23CV010650

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

MARNELLE MAC DULA, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a
Massachusetts Corporation;
JONATHAN JAY MAZELSKY, an
individual;
BRIAN P. MCKEON, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No.

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

BY FAX

1 Plaintiff MARNELLE MAC DULA ("Plaintiff"), on behalf of herself and all other similarly
2 situated employees, hereby files this Complaint against Defendants IDEXX DISTRIBUTION, INC.,
3 a Massachusetts Corporation; JONATHAN JAY MAZELSKY, an individual; BRIAN P. MCKEON,
4 an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants").
5 On information and belief, Plaintiff alleges the following:

6 **JURISDICTION AND VENUE**

7 1. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
8 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
9 Labor Code, California Business and Professions Code, and Wage Order No. 4.

10 2. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.2, and 395.5, in that
11 Defendant is a foreign entity and has not designated any county in California as being where it maintains
12 its principal offices. In addition, some of the wrongful acts and violations of law asserted herein
13 occurred within Sacramento County, and Defendant's obligation to pay wages arose in Sacramento
14 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

15 3. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
16 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
17 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
18 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on July 18,
19 2023. Plaintiff provided facts and legal bases for his claims within the notice to the LWDA on all
20 violations asserted under the Private Attorneys General Act cause of action. Plaintiff submitted the
21 \$75.00 filing fee. The July 18, 2023 notice was also sent via certified mail to Defendants on the same
22 day. Plaintiff is informed and believes, that to date, the LWDA has not provided any response to
23 Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and believes that she has exhausted
24 all administrative remedies pursuant to the Private Attorneys General Act and may bring this action on
25 behalf of herself and all Aggrieved Employees. *See* Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
26 *Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
27 includes all individuals who have, or continue to, perform work for Defendants in California as non-
28 exempt employees from July 18, 2022 to the present.

PARTIES

4. MARNELLE MAC DULA is an individual over the age of eighteen (18) and is a resident of the State of California.

5. On information and belief, Plaintiff alleges, IDEXX DISTRIBUTION, INC., is now and/or at all times mentioned in this Complaint was a Massachusetts Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges, that JONATHAN JAY MAZELSKY is an individual over the age of eighteen (18) and is a resident of the State of Massachusetts. Plaintiff further alleges that JONATHAN JAY MAZELSKY is an owner, director, officer, and/or managing agent of IDEXX DISTRIBUTION, INC. responsible for causing the violations outlined in this action. As such JONATHAN JAY MAZELSKY is individually liable pursuant to California Labor Code section 558.1.

7. Plaintiff is informed and believes, and thereupon alleges, that BRIAN P. MCKEON is an individual over the age of eighteen (18) and is a resident of the State of Massachusetts. Plaintiff further alleges that BRIAN P. MCKEON is an owner, director, officer, and/or managing agent of IDEXX DISTRIBUTION, INC. responsible for causing the violations outlined in this action. As such BRIAN P. MCKEON is individually liable pursuant to California Labor Code section 558.1.

8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

9. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

1 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
2 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

3 12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
4 wrongs, complaints, injuries and/or damages alleged in this Complaint.

5 **GENERAL ALLEGATIONS**

6 13. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 12 as though fully
7 set forth herein.

8 14. Plaintiff and Aggrieved Employees worked for Defendants within the claim period as
9 non-exempt employees. Plaintiff worked for Defendants from approximately January 2022 to April
10 2023. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty
11 (40) hours in a week.

12 15. Defendants paid Plaintiff and Aggrieved Employees an hourly rate in addition to shift
13 differentials and a nondiscretionary Lab Bonus. However, Defendants failed to correctly incorporate the
14 value of the non-discretionary bonus into Plaintiff's and Aggrieved Employees' regular rates of pay for
15 premium pay purposes, including overtime, sick time, supplemental COVID paid sick time. For
16 example, in the August 8, 2022 to August 21, 2022 pay period, Defendants paid Plaintiff a Lab Bonus
17 that was not incorporated into her regular rate of pay for the purpose of paying overtime wages and sick
18 time. Additionally, Defendants did not incorporate the value of shift differentials into the regular rate of
19 pay with regard to Plaintiff's and Aggrieved Employees' sick leave, meal and rest period premiums, and
20 supplemental COVID paid sick time. For example, in the July 25, 2022 to August 7, 2022 pay period,
21 Defendants paid Plaintiff a shift differential but failed to incorporate the value of the shift differential
22 into Plaintiff's regular rate of pay for the purpose of paying paid sick time. Instead, the sick time was
23 paid at her base hourly rate. This practice of Defendants to incorrectly calculate Plaintiff's and
24 Aggrieved Employees' regular rates of pay resulted in unpaid overtime, unpaid sick time, and unpaid
25 supplemental sick time for Plaintiff and Aggrieved Employees.

26 16. Defendants failed to pay Plaintiff and Aggrieved Employees for all regular and overtime
27 hours worked. Defendants required Plaintiff and Aggrieved Employees to complete their work but
28 prohibited overtime, which required Plaintiff and Aggrieved Employees to work off-the-clock.

1 Defendants' management would instruct Plaintiff and Aggrieved Employees during meetings that they
2 needed to complete all of the work assigned during their shift but would not be permitted to work
3 overtime. At times this was an impossible task due to understaffing and the amount of work Defendants
4 assigned to be completed during a shift. Plaintiff estimates that each week she was not paid for
5 approximately five (5) to thirty (30) minutes of work.

6 17. Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all
7 meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work
8 for periods of more than five hours without providing them an off-duty meal period of at least 30
9 minutes. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved Employees
10 with second meal periods when they worked shifts longer than ten (10) hours. Defendants would alter
11 time records to make it appear that there were not late or missed meal periods for Plaintiff and
12 Aggrieved Employees. For example, Plaintiff worked a shift on or about June 8, 2022 where she
13 worked a shift longer than twelve (12) hours without receiving a second meal period. Defendants
14 employed Plaintiff and Aggrieved Employees for periods of longer than three and one-half (3.5) hours
15 without providing at least a 10-minute rest period. Defendants did not have a policy or practice to
16 provide Plaintiff and Aggrieved Employees with a third rest period when they worked shifts longer than
17 ten (10) hours. For example, on or about June 8, 2022, Plaintiff worked a shift longer than twelve (12)
18 hours without receiving all of her rest breaks. Defendants' management also frowned upon breaks being
19 taken, including bathroom breaks. Employees who took breaks were viewed as not hard working.
20 Defendants did not pay Plaintiff and Aggrieved Employees all missed meal and rest period premiums
21 they were owed.

22 18. Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones
23 to track their hours worked. Plaintiff and similarly situated employees used the Workday app on their
24 personal cellphones each day to log their hours and any meal periods taken. However, Defendants failed
25 to pay any reimbursements to Plaintiff and Aggrieved Employees for the use of their personal
26 cellphones.

27 19. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage
28 statements. The wage statements Defendants provided did not accurately itemize employees' gross and

1 net wages, meal period premiums, rest period premiums, paid sick time, supplemental paid sick time,
2 and all applicable hourly rates in effect during the pay period, total hours worked, and the corresponding
3 number of hours worked at each hourly rate.

4 20. At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff
5 and Aggrieved Employees had overtime, sick time, supplemental paid sick time, and meal and rest
6 period premiums owing to them. As of the date of this letter, Defendants have not paid Plaintiff and
7 Aggrieved Employees all wages they are owed.

8 21. Defendant IDEXX DISTRIBUTION, INC. identified JONATHAN JAY MAZELSKY
9 and BRIAN P. MCKEON in its filings with the California Secretary of State during the claim period.
10 JONATHAN JAY MAZELSKY is identified as its Chief Executive Officer. BRIAN P. MCKEON is
11 identified as its Chief Financial Officer. Plaintiff is informed and believes that JONATHAN JAY
12 MAZELSKY and BRIAN P. MCKEON were responsible for creating and electing to implement or
13 participating in creating and electing to implement IDEXX DISTRIBUTION, INC.'s payroll and
14 compensation policies and practices, or that JONATHAN KAY MAZELSKY and BRIAN P. MCKEON
15 were aware of such policies and practices and ratified them.

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **(As to all Defendants)**

20 22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21 as though fully
21 set forth herein.

22 23. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
23 following provisions of the Labor Code in their dealings with him and other similarly situated current
24 and former employees:

- 25 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay
26 Overtime Wages)
- 27 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay
28 Minimum Wages)

- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code § 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. **As to the First Cause of Action:**

- a. For civil penalties as provided for in the Labor Code for each enumerated violation in an amount to be proven at trial;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

1 Dated: October 26, 2023

Shimoda & Rodriguez Law, PC

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3 By: Brittany Berzin
4 Galen T. Shimoda
5 Justin P. Rodriguez
6 Brittany V. Berzin
7 Attorneys for Plaintiff
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