

Attorneys for Plaintiff

ANGELICA MIA TUMANDAO, an individual,

Plaintiff,

v.

SAN FRANCISCO HEALTH CARE AND REHAB, INC., a California corporation; and Does 1 through 25, inclusive;

Defendants.

Case No.

Complaint Seeking Damages and Restitution for Wage & Hour Violations, Damages for Wrongful Termination, and Penalties under PAGA for Labor Code Violations

Demand for Jury Trial

1 Plaintiff is informed and believes and thereon alleges as follows:

2
3 **PARTIES**

4 1. Plaintiff ANGELICA MIA TUMANDAO is a competent adult.

5 2. Defendant SAN FRANCISCO HEALTH CARE AND REHAB, INC. is a California
6 corporation in the business of operating a skilled nursing facility.

7 3. Plaintiff is presently unaware of the true names and capacities of the persons named as Does
8 1 through 25 and therefore sues them by these fictitious names. Plaintiffs will amend this complaint to
9 assert their true names and capacities when these are ascertained. Except as otherwise alleged herein,
10 each of the entities sued as Does 1 through 25 was the agent of the other and each is responsible for the
11 damages to plaintiff as alleged herein.

12 **VENUE**

13 4. The defendants reside in the County of San Francisco, State of California.

14 **FACTUAL BACKGROUND**

15 5. From approximately February 2011 until she was discharged on approximately November
16 2011, Plaintiff was employed by defendants to provide nursing care to patients at Defendants' facility
17 in San Francisco California.

18 **FIRST CAUSE OF ACTION**

19 **Failure to Pay Overtime Premium**
20 **IWC Wage Order 5, Section 3**
Cal. Labor Code Sec. 1194(a)

21 6. Plaintiff incorporates herein the foregoing paragraphs.

22 7. Plaintiff and other nurses frequently worked more than eight hours in a workday.

23 8. Defendants often did not pay Plaintiff or other nurses any overtime premium for working
24 more than eight hours in a workday.

25 **SECOND CAUSE OF ACTION**

26 **Failure to Provide Meal Periods**
27 **Cal. Labor Code Sec. 226.7(b)**

28 9. Plaintiff incorporates herein the foregoing paragraphs.

1 10. Although plaintiff generally was employed for work periods in excess of five hours,
2 defendants often failed to provide plaintiff with meal periods. On these occasions, they also failed to
3 pay plaintiff one additional hour of pay at the regular rate of compensation.

4 **THIRD CAUSE OF ACTION**
5 **Failure to Authorize and Permit Rest Periods**
6 **Cal. Labor Code Sec. 226.7(b)**

7 11. Plaintiff incorporates herein the foregoing paragraphs.

8 12. Although Plaintiff generally was employed for work periods in excess of three and one-
9 half hours, defendants often failed to authorize and permit plaintiff to take rest periods. On these
10 occasions, they also failed to pay one additional hour of pay at the regular rate of compensation.

11 **FOURTH CAUSE OF ACTION**
12 **Failure to Provide Accurate Pay Stubs**
13 **Labor Code Sec. 226(e)**

14 13. Plaintiff incorporates herein the foregoing paragraphs.

15 14. Defendants often failed to furnish Plaintiff on the regular paydays with an accurate
16 itemized statement in writing showing gross wages earned, total hours worked, net wages earned, and
17 all applicable hourly rates of pay in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate.

19 15. Defendants knew that they were required by law to furnish accurate itemized statements in
20 writing and intentionally failed to furnish them to Plaintiff on the regular paydays.

21 16. Plaintiff suffered injury from Defendants' failure to provide accurate itemized statements
22 in writing on the regular paydays. Plaintiff could not determine the amount of wages earned or
23 whether all wages due had been paid. To do so plaintiff must go to the difficulty and bear the expense
24 of reconstructing all time and pay records to make computations to analyze the amounts of wages due.

25 **FIFTH CAUSE OF ACTION**
26 **Waiting Time Penalties**
27 **Cal. Labor Code Sec. 201, 203**

28 17. Plaintiff incorporates herein the foregoing paragraphs.

1 18. Plaintiff did not have a written contract for a definite period of employment.

2 19. Defendants willfully failed to pay Plaintiff all wages due at the time of the discharge from
3 employment.

4 **SIXTH CAUSE OF ACTION**

5 **Unfair Competition Law**

6 **Cal. Business & Professions Code Sec. 17200 et seq.**

7 20. Plaintiff incorporates herein the foregoing paragraphs.

8 **SEVENTH CAUSE OF ACTION**

9 **Wrongful Termination**

10 21. Plaintiff incorporates herein the foregoing paragraphs.

11 22. Labor Code Section 1198 makes it unlawful for any employer to employ any employee for
12 longer hours or under conditions of labor prohibited by the Industrial Welfare Commission Wage
13 Orders. Labor Code Section 98.6(a) prohibits discrimination against employees who exercise their
14 employment rights. Labor Code Section 1102.5(c) prohibits retaliation against employees for refusing
15 to participate in unlawful activities. These statutes manifest a public policy prohibiting employers
16 from requiring employees to work for substandard pay.

17 20. Defendants discharged Plaintiff because she complained about the hours worked and pay
18 received, and because she did not work a sufficient number of overtime hours, without pay, to
19 complete the workload imposed on her.

20 21. As a result, Plaintiff has suffered, and continues to suffer, the loss of income and
21 employment benefits. In the future she will suffer the loss of earning capacity. In addition, she has
22 suffered, and continues to suffer, serious and severe emotional distress, the loss of enjoyment of life,
23 and the loss of reputation.

24 22. Defendants and their officers, directors, or managing agents knew or should have known of
25 the conduct described above. This despicable conduct was carried on with a willful and conscious
26 disregard of Plaintiff's rights, and subjected her to cruel and unjust hardship in conscious disregard of
27 her rights.
28

EIGHTH CAUSE OF ACTION
Labor Code Private Attorneys General Act of 2004

23. Plaintiff incorporates herein the foregoing paragraphs.

24. Defendants employed Plaintiff and other employees to perform nursing services. Frequently these nurses worked more than eight hours in a day without being paid the overtime premiums mandated by Industrial Welfare Commission Wage Order 5, Section 3 and Labor Code Sections 510 and 1198.

25. Defendants often failed to provide Plaintiff and other employees with meal periods as required by Wage Order 5, Section 11 and Labor Code Sections 512 and 1198, and in those instances Defendants failed to pay them one additional hour of pay at their regular rates of compensation as required by Labor Code Section 226.7.

26. Defendants often failed to authorize or permit Plaintiff and other employees to take rest periods as required by Wage Order 5, Section 11 and Labor Code Section 1198, and in those instances Defendants failed to pay them one additional hour of pay at their regular rates of compensation as required by Labor Code Section 227.7.

27. Defendants often failed to maintain accurate time records showing when Plaintiff and other employees began and ended each work period, including meal periods, as required by Wage Order 5, Section 7 and Labor Code Section 1198.

28. Defendants often failed to pay Plaintiff and other employees all wages due on their regular paydays as required by Labor Code Section 204. Before filing suit, Plaintiff made a demand for the payment of all such wages.

29. Defendants often failed to furnish Plaintiff and other employees on their regular paydays with accurate itemized statements in writing showing gross wages earned, total hours worked, all deductions, net wages earned the inclusive dates for the pay period, the name of the employee and the last four digits of the employee's social security or employee identification number, the name and

1 address of the legal entity that is the employer, and all applicable hourly rates of pay in effect during
2 the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor
3 Code Section 226.

4 30. Defendants failed to pay Plaintiff and other former employees all wages due upon or
5 within 72 hours after their separations from employment in violation of Labor Code Sections 201 and
6 202.

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8 31. Defendants willfully failed to pay Plaintiff and other former employees the wages that
9 accrued as a penalty as a result of the failure to pay all wages due within 72 hours after their
10 separations from employment in violation of Labor Code Section 203.

11 32. On June 20, 2013, Plaintiff sent a written notice by certified mail to Defendants and to the
12 California Labor and Workforce Development Agency stating the specific provisions of the Labor
13 Code that were violated, including the facts and theories supporting the violations. By letter dated
14 August 13, 2013, the California Labor and Workforce Development Agency gave notification that it
15 did not intend to investigate these violations.
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, plaintiff prays for the following relief:

- 19 1. Damages in an amount to be proved at trial;
20 2. One additional hour of pay for each workday that Defendants failed to provide Plaintiff a
21 meal period pursuant to Labor Code Sec. 226.7 on the second cause of action;
22 3. One additional hour of pay for each workday that Defendants failed to provide Plaintiff with
23 rest periods pursuant to Labor Code Sec. 226.7 on the third cause of action;
24 4. Penalties pursuant to Cal. Labor Code Sec. 226(e) on the fourth cause of action;
25 5. Waiting time penalties pursuant to Cal. Labor Code Sec. 203 on the fifth cause of action;
26 7. Restitution of wages on the sixth cause of action;
27 8. Punitive damages on the seventh cause of action;
28 9. Penalties pursuant to Labor Code Sections 210, 226.3, 558, and 2698 *et seq.* on the eighth

- 1 cause of action;
2 10. Pre-judgment interest;
3 11. Costs of suit;
4 12. Reasonable attorney's fees; and
5 13. All other appropriate remedies.
6

7 Dated: August 30, 2013

aiman-smith marcy

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9 
10 Joseph Clapp, Esq.
11 Attorneys for Plaintiffs
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13 **Demand for Jury Trial**

14 Plaintiff hereby demands trial by jury.

15 Dated: August 30, 2013

aiman-smith marcy

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18 Joseph Clapp, Esq.
19 Attorneys for Plaintiffs
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