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E-FILED
3/19/2024 11:05 AM
Superior Court of California
County of Fresno
By: A. Hoffman, Deputy

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

JOY BELLAMY, on behalf of the State of
California, herself, and other aggrieved
employees.

Plaintiff,

v.

CARDIOVASCULAR CONSULTANTS
HEART CENTER, A MEDICAL
CORPORATION, a California Corporation; and
DOES 1-50, inclusive.

Defendant.

CASE NO.: [24CECG01172](#)

**REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

1 Plaintiff Joy Bellamy (“Plaintiff”), on behalf of the State of California, herself, and other
2 aggrieved employees, hereby brings this PAGA Representative Action Complaint (“Complaint”)
3 against Defendant Cardiovascular Consultants Heart Center, A Medical Corporation (“Defendant”)
4 and DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendant is a medical group practice in Fresno, CA, specializing in Nursing (Nurse
7 Practitioner) and Cardiology.

8 2. Plaintiff brings this PAGA Representative action lawsuit against Defendant for alleged
9 violations of the California Labor Code and applicable Wage Orders of the IWC.

10 3. As set forth below, Plaintiff alleges that Defendant failed to pay for all hours worked
11 due to its unlawful rounding policy/practice. Plaintiff further alleges that Defendant failed to pay all
12 overtime compensation at the “regular rate of pay.” Moreover, Plaintiff alleges that Defendant’s meal
13 and rest period policies and practices failed to allow and permit non-exempt employees to take all
14 compliant and timely meal and rest periods. Plaintiff further alleges that Defendant failed to provide
15 non-exempt employees with accurate written itemized wage statements in violation of Labor Code §
16 226(a) and failed to timely pay all final wages upon separation of employment in violation of Labor
17 Code §§ 201-203. Finally, Plaintiff alleges that Defendant also uniformly failed to reimburse for all
18 necessary business expenses.

19 4. Based on these alleged Labor Code violations, Plaintiff now brings this PAGA
20 Representative action to recover penalties and other related relief from the State of California, herself,
21 and all other aggrieved employees.

22 **JURISDICTION**

23 5. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on
24 behalf of the State of California and the group of aggrieved employees defined as follows: “All
25 individuals who are or were employed as hourly, aggrieved, employees by Defendants, or their
26 predecessors or merged entities, in the State of California from November 17, 2022, and continuing
27 to the present (“aggrieved employees).”
28

6. Plaintiff, on behalf of the State of California brings this representative action pursuant to Labor Code § 2698, *et seq.* seeking penalties for Defendants' violation of California Labor Code §§ 201-204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194, 1199, and all applicable IWC Wage Orders.

7. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2699, *et seq.*

8. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the State of California so as to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Butte. Defendants own, maintain offices, transact business, have an agent or agents within the County of Butte, and/or otherwise are found within the County of Butte, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

9. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California resident residing in the State of California.

10. Plaintiff is informed and believes and thereon alleges that Defendant GameStop, Inc., is a Minnesota corporation authorized to do business in California and is and/or was the legal employer of Plaintiff and the aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, and applicable Wage Orders.

11. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to

1 do) business in the State of California, County of Fresno.

2 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
3 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
4 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
5 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
6 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
7 corporate, were responsible in some manner for the acts and omissions alleged herein, and
8 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
9 practices alleged herein.

10 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
11 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times
12 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
13 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
14 the agents, servants, and employees of each and every one of the other Defendants, as well as the
15 agents of all Defendants, and at all times herein mentioned were acting within the course and scope
16 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
17 otherwise ratified each and every one of the acts or omissions complained of herein.

18 14. At all times mentioned herein, Defendants, and each of them, were members of and
19 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
20 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
21 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
22 employees.

23 **COMMON FACTUAL ALLEGATIONS**

24 9. Defendant is a medical group practice in Fresno, CA, specializing in Nursing and
25 Cardiology.

26 10. Plaintiff was employed by Defendant as a non-exempt employee with the title of
27 "Medical Billing Manager." Plaintiff began working for Defendant on July 10, 2021, until her
28 separation from employment on October 12, 2023.

1 11. Plaintiff and other aggrieved employees (including Medical Assistant, Emergency
2 Medical Technician, Sonographer, EKG Technician, and all other non-exempt positions) were
3 responsible for all aspects of Defendant's business in California. However, in these roles, Plaintiff
4 and other aggrieved employees were often not afforded all protections and rights conferred under the
5 California Labor Code and applicable Wage Orders.

6 12. At all relevant times, Plaintiff and other aggrieved employees regularly worked
7 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
8 Plaintiff alleges that other non-exempt employees were also subjected to the same policies,
9 procedures, and practices, working conditions, and corresponding wage and hour violations to which
10 she was subjected during her employment.

11 13. First, at all relevant times, Defendant has had a consistent practice/policy of unevenly
12 rounding Plaintiff and other aggrieved employees' time entries, resulting in a failure to pay all hours
13 worked. As a result of this practice, over a period of time, Plaintiff and other aggrieved employees
14 are not compensated for all the hours that they work and all of the overtime hours they work, in
15 violation of Cal. Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

16 14. California courts have held that rounding time policies can be lawful "if the rounding
17 policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a
18 period of time, in failure to compensate the employees properly for all the time they have actually
19 worked. *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (29 C.F.R. § 785.48;
20 see DLSE Manual, *supra*, §§ 47.1, 47.2)."

21 15. Here, Defendant's rounding time policy/practice is not neutral on its face or in its
22 application as Plaintiff and other aggrieved employees are subject to discipline, including termination
23 for being tardy in reporting to work or returning from a meal period. Moreover, because Defendant
24 is easily capable of tracking the time worked by non-exempt employees to the minute, the policy
25 itself exists not for the convenience or benefit of the employees who are trying to report their time on
26 timecards or otherwise but for Defendant's benefit. As a result, the policy is not neutral on its face,
27 and over a period of time, Plaintiff and other aggrieved employees were not properly paid for all
28 hours worked in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage

1 Orders.

2 16. As a result of this rounding practice, over a period of time, Plaintiff and other
3 aggrieved employees were not properly paid for all hours worked in violation of Labor Code §§ 204,
4 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

5 17. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
6 by an applicable state or local law, or by order of the commission a civil penalty, restitution of wages,
7 and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one
8 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
9 underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty
10 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
11 regardless of whether the initial violation is intentionally committed. Additionally, Labor Code §
12 510 requires an employer to compensate an employee who works more than eight (8) hours in one
13 workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh
14 consecutive day, no less than one and one-half times (1 1/2) the regular rate of pay.

15 18. In addition, Labor Code § 510 obligates employers to compensate employees at no
16 less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
17 workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3
18 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8)
19 hours in any workday or more than 40 hours in any workweek unless the employee receives one and
20 one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
21 workweek.

22 19. Furthermore, at all relevant times, Plaintiff and other aggrieved employees worked
23 regular shifts that lasted longer than 8.0 hours in a workday and resulted non-exempt employees
24 regularly working more than 40 hours in a workweek. However, Plaintiff and other aggrieved
25 employees were not properly paid at the correct overtime rate for all overtime hours worked due to
26 Defendant's uniform failure to include all forms of compensation/remuneration, including, but not
27 limited to, commissions, incentives, bonuses, and all other forms of remuneration in calculating the
28 "regular rate of pay" for purposes of overtime compensation.

1 20. Under the California Labor Code (as well as the FLSA), courts have consistently held
2 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
3 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
4 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
5 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
6 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California
7 and federal law on the grounds, that Defendant improperly calculated overtime by excluding annual
8 bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-*
9 *Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect
10 all payments which the parties have agreed shall be received regularly during the workweek,
11 exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an actual fact.
12 Once the parties have decided upon the amount of wages and the mode of payment the determination
13 of the regular rate becomes a matter of mathematical computation, the result of which is unaffected
14 by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110
15 ("production bonus") and 778.111 ("piece-rate").)

16 21. Labor Code § 510 requires an employer to compensate an employee who works more
17 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
18 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
19 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
20 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
21 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
22 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
23 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
24 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

25 22. By their policy of requiring Plaintiff and the other non-exempt employees to work in
26 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
27 them at the lawful rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the
28 provisions of Labor Code § 510 and the applicable Wage Orders.

1 23. Similarly, at all relevant times, Plaintiff and other aggrieved employees were denied
2 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
3 Defendant's uniform meal period policies/practices and work demands, Plaintiff and other aggrieved
4 employees were often unable to take timely and uninterrupted net 30-minute first meal periods before
5 the end of the fifth hour of work.

6 24. In addition, for each missed or non-compliant meal period, Defendant failed and
7 continues to fail to maintain a mechanism by which non-exempt employees were paid meal period
8 premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
9 5th 858 and Labor Code § 226.7.

10 25. Accordingly, due to Defendant's uniform meal period policies/practices, non-exempt
11 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§
12 226.7, 510, 516, and applicable Wage Orders.

13 26. Moreover, at all relevant times, Plaintiff and other aggrieved employees were not
14 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
15 to Defendant's uniform rest period policies/practices operational requirements, and work demands.
16 As a result, Plaintiff and other aggrieved employees were and are often unable to take a net 10-minute
17 duty free rest periods for every major fraction of four hours worked. This includes a second rest period
18 for shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

19 27. By not relieving all non-exempt employees of all duties during rest periods, Defendant
20 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
21 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all
22 duties and relinquish control over how employees spend their time."] (Emphasis added). In *Augustus*,
23 the California Supreme Court expressly rejected the employers' assertion that it could provide an on-
24 duty rest period to employees who worked as security guards and further explained "that employers
25 [must] relinquish any control over how employees spend their break time and relieve their employees
26 of all duties." *Id.* at 273. Each time non-exempt employees were unable to take a compliant rest
27 period, Defendant failed and continues to fail to adequately pay rest period premium payments at the
28 "regular rate of pay" as required by Labor Code § 226.7.

1 28. Accordingly, due to Defendant's uniform rest period policies/practices, non-exempt
2 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
3 512, and applicable Wage Orders.

4 29. As a result of Defendant's failure to pay Plaintiff and other aggrieved employees for
5 all hours they were subject to the control of Defendant, including all minimum and overtime wages,
6 and Defendant's failure to adequately pay for all overtime, sick pay, and meal and rest period
7 premiums at the "regular rate of pay," Defendant issued wage statements which failed to accurately
8 identify the gross wages earned, the total hours worked, the net wages earned, and the correct
9 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2,
10 5, and 9).

11 30. In addition, Defendant issued wage statements which failed to accurately identify the
12 correct name of Plaintiff and other non-exempt.

13 31. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
14 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
15 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
16 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
17 deduction statement or fails to keep the required in subdivision (a) of Section 226."

18 32. Thus, Plaintiff is an non-exempt employee and Defendant have violated Labor Code
19 §226(a) with respect to Plaintiff and other aggrieved employees. Consequently, because Defendant
20 failed to comply with Labor Code § 226(a), Plaintiff and other aggrieved employees would be entitled
21 to recover penalties under Labor Code § 226(e).

22 33. As a result of Defendant's failure to pay all minimum and overtime, and meal and rest
23 period premiums at the "regular rate of pay", Defendant also failed and continue to fail to pay Plaintiff
24 and other aggrieved employees all wages owed at their time of separation from employment in
25 violation of Labor Code §§ 201-203.

26 34. Finally, at all relevant times, Defendant required Plaintiff and other aggrieved
27 employees to incur necessary business expenses associated with using their personal cell phones for
28 work-related purposes but did not reimburse non-exempt employees adequately for these necessary

1 expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan's Home Service, Inc.*,
2 (2014) 228 Cal.App.4th 1137, 1144 “[i]f an employee is required to make work-related calls on a
3 personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does
4 not matter whether the phone bill is paid for by a third person, or at all...To show liability under
5 section 2802, an employee need only show that he or she was required to use a personal cell phone
6 to make work-related calls, and he or she was not reimbursed”]

7 35. Here, Defendant uniformly failed to reimburse non-exempt employees for a
8 reasonable portion of cell phone bill, and other necessary costs incurred, in the discharge of their
9 duties for those non-exempt employees. Accordingly, due to Defendant’s uniform failure to
10 adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802
11 and applicable Wage Orders.

12 **FIRST CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 *(Plaintiff and Similarly Aggrieved Employees Against All Defendants)*

15 36. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
16 in the preceding paragraphs.

17 37. Defendants have committed several Labor Code violations against Plaintiff and
18 other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
19 Code § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action
20 against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees,
21 and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including,
22 but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per
23 employee per pay period for those violations of the Labor Code for which no civil penalty is
24 specifically provided based on the following Labor Code violations:

25 (a) Defendant’s failure to pay all minimum and overtime wages due to Defendant’s
26 timekeeping policies and practices, including, but not limited to, time rounding;

27 (b) Defendants’ failure to pay all overtime and sick pay wages at the “regular rate of pay”
28 because Defendants failed to include all forms of compensation, including, but not limited to, shift

1 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration.

2 (c) Defendants' failure to pay all sick pay at the "regular rate of pay";

3 (d) Defendants' failure to allow and permit legally compliant meal periods or compensation
4 at the "regular rate of pay" in lieu thereof;

5 (e) Defendants' failure to allow and permit legally compliant rest periods or compensation
6 at the "regular rate of pay" in lieu thereof;

7 (f) Defendants' failure to furnish legally compliant wage statements pursuant to Labor
8 Code § 226(a);

9 (g) Defendant's failure to reimburse for all necessary business expenses incurred: and

10 (h) Defendants' failure to timely pay final wages to aggrieved employees at the time of
11 separation from employment were unlawful.

12 38. On or about November 17, 2023, Plaintiff notified Defendant via certified mail, and the
13 California Labor and Workforce Development Agency ("LWDA") via its website of Defendant's
14 violations of the California Labor Code § 2698 *et. seq.* with respect to violations of the California
15 Labor Code identified in Paragraph 37(a)-(f).

16 39. Now that sixty-five days (65) have passed since the Plaintiff notified the Defendant of
17 these violations, the Plaintiff has exhausted her administrative requirements for bringing a claim
18 under the Private Attorneys General Act regarding these violations.

19 40. Plaintiff was compelled to retain the services of counsel to file this court action to protect
20 her interests and the interests of other similarly aggrieved employees and to assess and collect the
21 civil penalties owed by Defendants. Plaintiff has, therefore, incurred attorneys' fees and costs, which
22 he is entitled to receive under California Labor Code § 2698 *et seq.*

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
25 Defendants, as follows:

26 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
28 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each

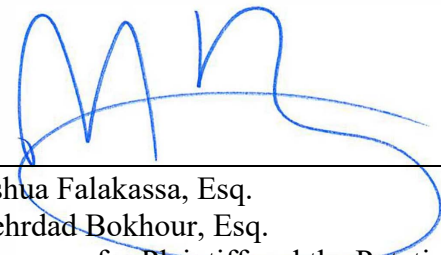
1 subsequent violation per employee per pay period for those violations of the Labor Code for which
2 no civil penalty is specifically provided under the Labor Code;

3 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
4 of Civil Procedure §1021.5; and

5 3. For such other and further relief, the Court may deem just and proper.
6

7 Dated: March 18, 2024

FALAKSSA LAW, P.C.
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8
9
10 By: 

11 Joshua Falakassa, Esq.

12 Mehrdad Bokhour, Esq.

13 Attorneys for Plaintiff and the Putative Classes
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