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12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 SARAI BORJA, individually and on behalf of
15 all aggrieved employees,

16 Plaintiff,

17 v.

18 POMONA HEALTHCARE & WELLNESS
19 CENTER, LLC, and DOES 1 to 100,

20 Defendants.

Case No. 24PSCV03246

COMPLAINT

1. Meal Break Violations
2. Rest Break Violations
3. Failure to Pay All Hours Worked
4. Failure to Pay Overtime
5. Failure to Reimburse Work Expenses
6. Wage Statement Penalties
7. PAGA Allegations
8. Disability Discrimination in Violation of FEHA
9. Failure to Accommodate in Violation of FEHA
10. Failure to Engage in Interactive Process in Violation of FEHA
11. Retaliation in Violation of FEHA

1 **PARTIES**

2 1. Plaintiff Sarai Borja (“Plaintiff”) is a of Los Angeles County.

3 2. Defendant Pomona Healthcare & Wellness Center, LLC (“Defendant”) is a limited liability
4 company with its principal place of business in Los Angeles County.

5 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as Does1
6 to 100 (“Doe Defendants”), and therefore uses fictitious names. Plaintiff will amend this Complaint
7 to insert the true names and capacities of the Doe Defendants when the information has been
8 obtained. Plaintiff is informed and believes, and based on such information and belief alleges, that
9 each of the fictitiously named Doe Defendants has participated in some way in the wrongful acts
10 and omissions alleged below, and is liable to Plaintiff for damages and other relief to which Plaintiff
11 is entitled. Defendant and Doe Defendants are collectively referred to as “Defendants”.

12
13 **FACTUAL ALLEGATIONS**

14 4. At all times relevant, Plaintiff was Defendants’ employee.

15 5. Plaintiff worked for Defendants as an Activities Worker from approximately April 2023 to
16 present.

17 6. In October 2023, Plaintiff suffered a knee injury at work while breaking up a physical
18 altercation between residents. Shortly thereafter, Defendants transferred Plaintiff to a less favorable
19 position with duties that exacerbated her knee injury. Defendants failed to provide any formal work
20 restrictions or accommodation for her injury despite notice of Plaintiff’s work-related injury.

21 7. Further, between October 2023 and February 2024, Plaintiff’s work schedule frequently
22 changed on short notice by Defendants, causing her to miss shifts due to the last-minute changes
23 which conflicted with her medical appointments. Defendants then wrote up Plaintiff multiple times
24 for these injury related absences.

25 8. As an actual and proximate result of the discriminatory conduct of Defendants, Plaintiff
26 suffered and continues to suffer pain, humiliation, emotional distress, trauma, and sleeplessness.

27 9. Also, as an actual and proximate result of Defendants’ illegal employment actions, Plaintiff
28 has suffered lost wages, including without limitation, loss of salary and benefits.

10. Defendants failed to provide Plaintiff with compliant meal breaks because Plaintiff would be interrupted during her meal breaks to assist patients. Plaintiff was required to remain within the work premises and on-call at all times. Despite not being provided with compliant meal breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

11. Defendant failed to provide Plaintiff with compliant rest breaks because Plaintiff was required to remain within the work premises and on-call at all times. Despite not being provided with compliant rest breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

12. Defendants failed to pay Plaintiff for all hours worked because Plaintiff would be required to record a meal break despite not having taken one.

13. Defendants failed to pay Plaintiff all overtime owed because Plaintiff's missed meal breaks constitute hours in excess of regular hours of work.

14. Defendants failed to correctly calculate Plaintiff's regular rate of pay, and as a result, underpaid Plaintiff's overtime pay and premium pay since Defendants did not include all non-discretionary pay that Plaintiff earned when calculating Plaintiff's regular rate of pay.

15. Defendants failed to reimburse Plaintiff for all work-related expenses because Plaintiff was required to use her own vehicle and gas in order to perform their work duties, but Defendants did not reimburse Plaintiff for these expenses. Plaintiff bought food and other items for activities for patients/residents without being reimbursed for these expenses.

16. Defendants failed to provide Plaintiff with accurate wage statements because the wage statements did not accurately list total wages owed and hours worked.

PAGA ALLEGATIONS

17. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees. On March 19, 2024, Plaintiff provided

1 written notice by online filing to the LWDA and by certified mail to Defendant of the provisions of
2 the Labor Code that were violated.

3 18. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written
4 notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff can seek
5 PAGA penalties.

6 19. The Aggrieved Employees are “All other nonexempt, hourly employees, current and former,
7 who were employed by Defendants within one year prior to March 19, 2024, through final
8 disposition of this action.”

9
10 **EXHAUSTION OF ADMINISTRATIVE PROCESS**

11 20. On July 29, 2024 Plaintiff obtained a right-to sue letter.

12
13 **FIRST CAUSE OF ACTION**

14 **Meal Break Violations**

15 **Against All Defendants**

16 21. Plaintiff incorporates by reference the above paragraphs.

17 22. Labor Code section 512 and the Wage Orders provide that an employer shall not employ an
18 employee for a work period of more than five hours per day without providing the employee with a
19 meal period of not less than 30 minutes or for a work period of more than 10 hours per day without
20 providing the employee with a second meal period of not less than 30 minutes”.

21 23. An employer provides compliant meal breaks to its employees if it relieves its employees of
22 all duty, relinquishes control over their activities and permits them a reasonable opportunity to take
23 an uninterrupted 30-minute break. (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004,
24 1040 (2012)).

25 24. Not only must an employer affirmatively relieve its employees of all duty during their meal
26 breaks, it also must not impede or discourage its employees from taking compliant meal breaks.

27 25. Defendants did not provide Plaintiff with compliant meal breaks.

28 26. Plaintiff was required to remain on premises, and work while clocked out.

1 27. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
2 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
3 one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*
4 (2021) 11 Cal. 5th 858.)

5 28. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a meal
6 break was missed.

7 29. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
8 attorney fees, and costs.

9
10 **SECOND CAUSE OF ACTION**

11 **Rest Break Violations**

12 **Against All Defendants**

13 30. Plaintiff incorporates by reference the paragraphs above.

14 31. Labor Code section 226.7 and the Wage Orders require employers to authorize and permit
15 rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours.

16 32. Furthermore, during rest periods employers must relieve employees of all duties and
17 relinquish control over how employees spend their time." (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
18 5th 257, 269 (2016)).

19 33. Defendants did not provide Plaintiff with compliant rest breaks.

20 34. Plaintiff was not allowed to leave the work premises during rest breaks and was subject to
21 Employer's control.

22 35. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
23 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
24 one additional hour of pay at Plaintiff's regular rate of pay.

25 36. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a rest
26 break was missed.

27 37. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
28 attorney fees, and costs.

1 **THIRD CAUSE OF ACTION**

2 **Failure to Pay for All Hours Worked**

3 **Against All Defendants**

4 38. Plaintiff incorporates by reference the paragraphs above.

5 39. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay
6 employees at least the minimum wage for all non-overtime hours.

7 40. Defendants failed to pay Plaintiff for all hours worked.

8 41. Defendants required Plaintiff to clock out for a meal break despite being required to work
9 during that time.

10 42. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest,
11 attorney fees, and costs.

12
13 **FOURTH CAUSE OF ACTION**

14 **Failure to Pay All Overtime**

15 **Against All Defendants**

16 43. Plaintiff incorporates by reference the paragraphs above.

17 44. Labor Code section 510 provides that any work in excess of eight hours in one workday and
18 any work in excess of 40 hours in any one workweek shall be compensated at the rate of no less
19 than one and one-half times the regular rate of pay for an employee.

20 45. Defendants failed to pay Plaintiff all overtime wages.

21 46. Plaintiff would be required to clock out during for a meal break despite being required to
22 work. That time worked was in excess of eight hours in one workday.

23 47. Plaintiff is entitled to recover all unpaid overtime, interest, attorney fees, and costs.

24
25 **FIFTH CAUSE OF ACTION**

26 **Failure To Reimburse Work-Related Expenses**

27 **Against All Defendants**

28 48. Plaintiff incorporates by reference the paragraphs above.

1 49. Pursuant to Labor Code section 2802, an employer shall indemnify his or her employee for
2 all necessary expenditures or losses incurred by the employee in direct consequence of the
3 employee's discharge of his or her duties.

4 50. Defendants failed to reimburse Plaintiff for all work-related expenses.

5 51. Plaintiff would use her own vehicle and gas to transport patients/residents without being
6 reimbursed for mileage.

7 52. Plaintiff also incurred expenses for food and materials for work-related activities.

8 53. Plaintiff is entitled to reimbursement for all work-related expenses, and attorney fees.

9
10 **SIXTH CAUSE OF ACTION**

11 **Wage Statement Penalties**

12 **Against All Defendants**

13 54. Plaintiff incorporates by reference the paragraphs above.

14 55. Labor Code section 226(a) requires employers to provide accurate itemized wage statements

15 56. The wage statements that Defendants issued to Plaintiff were inaccurate.

16 57. Defendants knowingly and intentionally issued wage statements that were inaccurate.

17 58. Plaintiff is therefore entitled to wage statement penalties and attorney fees.

18
19 **SEVENTH CAUSE OF ACTION**

20 **Private Attorneys General Act**

21 **Against All Defendants**

22 59. Plaintiff incorporates by reference the paragraphs above.

23 60. With respect to violations of Labor Code sections 226.7 and 558 for Defendants' failure to
24 provide Plaintiff and the Aggrieved Employees with compliant meal periods or compensation in
25 lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

26 61. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide
27 Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof,
28 the penalties in Labor Code section 2699 apply.

1 62. With respect to violations of Labor Code section 1194 for Defendants' failure to compensate
2 Plaintiff and the Aggrieved Employees for all minimum wages, the penalties in Labor Code sections
3 1197.1 and 2699 apply.

4 63. With respect to violations of Labor Code section 510 for Defendants' failure to compensate
5 Plaintiff and the Aggrieved Employees for all overtime wages, the penalties in Labor Code sections
6 558, 1197.1, and 2699 apply.

7 64. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
8 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3
9 and 2699 apply.

10 65. With respect to violations of Labor Code section 2802 for failure to reimburse for all work-
11 related expenses, the penalties in Labor Code section 2699 apply.

12 66. Pursuant to Labor Code section 2699(k)(1), Plaintiff further seeks public injunctive relief in
13 the form of an Order enjoining Defendants from continuing to violate the Labor Code in the manner
14 alleged herein, as well as restitution and disgorgement of all unpaid wages and penalties due and
15 owing to the Aggrieved Employees.

16 67. Plaintiff is entitled to attorney's fees pursuant to Labor Code section 2699(g).

17
18 **EIGHTH CAUSE OF ACTION**

19 **Discrimination Based on Disability**

20 **Against All Defendants**

21 68. Plaintiff incorporates by reference the paragraphs above.

22 69. Government Code section 12940(a) prohibits an employer from discriminating against an
23 employee in compensation or in terms, conditions, or privileges of employment because of the
24 employee's race, national origin, ancestry, physical disability, mental disability, medical condition
25 or sex.

26 70. Plaintiff was subjected to discrimination based on disability

27 71. Despite notice of Plaintiff's injury, Defendants transferred Plaintiff to a less favorable
28 position with duties that exacerbated her knee injury.

1 72. Defendants failed to provide any formal work restrictions or accommodation.

2 73. The discriminatory actions of Defendants against Plaintiff constitute unlawful discrimination
3 in violation of FEHA. Plaintiff is entitled to general damages and attorney fees.

4
5 **NINTH CAUSE OF ACTION**

6 **Failure to Accommodate Disability**

7 **Against All Defendants**

8 74. Plaintiff incorporates by reference the paragraphs above.

9 75. Plaintiff is an individual with a disability as defined by FEHA.

10 76. FEHA requires an employer to make a reasonable accommodation for the disabilities of
11 employees to enable them to perform a position's essential functions, unless doing so would
12 produce undue hardship to the employer's operations. (Govt. Code, § 12940(m).)

13 77. As a result of Plaintiff's disability, Plaintiff qualified for a reasonable accommodations.

14 78. Defendants were on notice of Plaintiff's need for a reasonable accommodation..

15 79. Despite notice of Plaintiff's injury, Defendants transferred Plaintiff to a less favorable
16 position with duties that exacerbated her knee injury and did not provide the accommodation.

17 80. Plaintiff is entitled to general damages and attorney fees.

18
19 **TENTH CAUSE OF ACTION**

20 **Failure to Engage in the Interactive Process**

21 **Against All Defendants**

22 81. Plaintiff incorporates by reference the paragraphs above.

23 82. Govt. Code §12940(n) requires employers to engage in a timely, good faith, interactive
24 process with an employee to determine effective reasonable accommodations if an employee with a
25 disability requests it.

26 83. As a result of Plaintiff's disability, Plaintiff needed an accommodation.

27 84. Despite having notice of Plaintiff's disability and need for an accommodation, Defendants
28 did not engage in the interactive process.

1 85. Plaintiff is entitled to general damages and attorney fees.

2
3 **ELEVENTH CAUSE OF ACTION**

4 **Retaliation in Violation of FEHA**

5 **Against All Defendants**

6 86. Plaintiff incorporates by reference the paragraphs above.

7 87. Government Code § 12940(h) makes it unlawful for an employer to discriminate against an
8 employee who opposes or makes a complaint for practices forbidden by FEHA.

9 88. Plaintiff engaged in protected activity by requesting an accommodation for her work-related
10 injury.

11 89. Defendants retaliated against Plaintiff in violation of California Government Code §
12 12940(h) transferring Plaintiff to a less favorable position which further aggravated her injury and
13 she made less money.

14 90. Plaintiff is entitled to actual damages, general damages, and attorney fees.

15
16 **PRAYER FOR RELIEF**

17 **First Cause of Action**

- 18 1. Premium pay
19 2. Interest
20 3. Attorney fees
21 4. Costs
22 5. Other relief the court deems proper
23

24 **Second Cause of Action**

- 25 1. Premium pay
26 2. Interest
27 3. Attorney fees
28 4. Costs

1 5. Other relief the court deems proper

2

3 Third Cause of Action

4 1. Unpaid wages

5 2. Liquidated damages

6 3. Interest

7 4. Attorney fees

8 5. Costs

9 6. Other relief the court deems proper

10

11 Fourth Cause of Action

12 1. Unpaid overtime

13 2. Interest

14 3. Attorneys' fees

15 4. Costs

16 5. Other relief the court deems proper

17

18 Fifth Cause of Action

19 1. Reimbursement of all work-related expenses

20 2. Attorney fees

21 3. Costs

22 4. Other relief the court deems proper

23

24 Sixth Cause of Action

25 1. Wage statement penalties

26 2. Attorney fees

27 3. Costs

28 4. Other relief the court deems proper

1 Seventh Cause of Action

- 2 1. All applicable PAGA penalties
- 3 2. Public injunctive relief in enjoining Defendants from continuing to violate the Labor Code,
- 4 as well as restitution and disgorgement of all unpaid wages and penalties due and owing to
- 5 the Aggrieved Employees
- 6 3. Attorney fees
- 7 4. Costs
- 8 5. Other relief the court deems proper

9 Eighth Cause of Action

- 10 1. General damages
- 11 2. Attorneys' fees
- 12 3. Costs
- 13 4. Other relief the court deems proper

14 Ninth Cause of Action

- 15 1. General damages
- 16 2. Attorney fees
- 17 3. Costs
- 18 4. Other relief the court deems proper

19 Tenth Cause of Action

- 20 1. General damages
- 21 2. Attorney fees
- 22 3. Costs
- 23 4. Other relief the court deems proper

24 Eleventh Cause of Action

- 25 1. Compensatory damages
- 26 2. General damages
- 27 3. Attorney fees
- 28 4. Costs

1 Date: September 30, 2024

FRONTIER LAW CENTER

2 /s/ Adam Rose

3 Attorney for Plaintiff

4 Sarai Borja

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