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By Y. Tarasyuk, Deputy Clerk

14 Attorneys for Plaintiff MARCELINO ANTUNEZ,
15 on behalf of himself and current and former aggrieved employees

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES- CENTRAL DIVISION

MARCELINO ANTUNEZ, on behalf of himself
and current and former aggrieved employees

Plaintiff,

vs.

MERIDIAN SENIOR LIVING, LLC; and DOES
1 to 100, inclusive,

Defendants.

Case No.: **24STCV12660**

PAGA ACTION

**PLAINTIFF MARCELINO
ANTUNEZ'S COMPLAINT FOR:**

**CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 ("PAGA"),
LABOR CODE SECTIONS 2698, ET
SEQ.**

COMES NOW Plaintiff MARCELINO ANTUNEZ (“Plaintiff”), who alleges and complains on information and belief except as to those allegations relating to Plaintiff himself, which are asserted on personal knowledge, against Defendants MERIDIAN SENIOR LIVING, LLC; and DOES 1 to 100, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”) representative action brought by Plaintiff on behalf of the State of California, himself and other current and former aggrieved employees of Defendants who worked as hourly non-exempt employees in California during the relevant time period seeking civil penalties associated with Defendants’ violation of the Labor Code based on Defendants’ failure to provide all legally required and legally compliant rest periods, failure to timely pay earned wages during employment, failure to provide complete and accurate wage statements, and failure to timely pay all unpaid wages following separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys’ fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims of Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks civil penalties on behalf of himself, all other current and former aggrieved California-based hourly non-exempt employees, and the State of California in excess of thirty-five thousand dollars (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees and the injuries to Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees occurred in locations throughout California, including but not limited to Los Angeles County at 120 West San Jose Avenue, Claremont, CA 91711.

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1 **III. PARTIES**

2 3. Plaintiff brings this action as a representative of the Labor and Workforce
3 Development Agency on behalf of himself and other current and former employees subject to
4 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
5 filed include current, former and/or future employees of Defendants who work, worked, or will work
6 for Defendants as direct employees as well as temporary employees employed through temporary
7 agencies as hourly non-exempt employees in California (collectively, "PAGA EMPLOYEES"). At
8 all times mentioned herein, the currently named Plaintiff is and was domiciled and a resident and
9 citizen of California and was employed by Defendants in an hourly position at Defendants' location
10 in Claremont from approximately 2006 until on or about September 8, 2023.

11 4. Defendant MERIDIAN SENIOR LIVING, LLC ("MERIDIAN") is authorized to do
12 business within the State of California and is doing business in the State of California. Defendants
13 DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendant
14 MERIDIAN in the establishment of, or ratification of, the aforementioned illegal wage and hour
15 practices or policies. Defendant MERIDIAN operates in Los Angeles County and employed PAGA
16 EMPLOYEES in Los Angeles County, including but not limited to, at 120 West San Jose Avenue,
17 Claremont, CA 91711.

18 5. Defendants DOES 1 through 50 are corporations, or are other business entities or
19 organizations of a nature unknown to Plaintiff that employed PAGA EMPLOYEES, permitted them
20 to work, and exercised control over their wages, hours and working conditions of employment of
21 Plaintiff and aggrieved employees.

22 6. Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each of the
23 individual defendants is sued individually and in his or her capacity as an agent, shareholder, owner,
24 representative, manager, supervisor, independent contractor and/or employee of each defendant who
25 violated or caused to be violated the minimum wage and overtime provisions of the Labor Code
26 and/or any provision of the Industrial Welfare Commission's wage orders regulating hours and days
27 of work.

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7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said defendants by said fictitious names and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Each of the fictitiously named defendants is in some manner responsible for the events and allegations set forth in this complaint.

8. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

**CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE SECTIONS 2698, ET SEQ.**

(Against all Defendants by PAGA EMPLOYEES and the State of California)

9. Plaintiff incorporates by reference and re-alleges each and every allegation contained in this pleading as though fully set forth herein.

10. During Plaintiff's employment and continuing through the present, Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, and the applicable Wage Orders.

11. Specifically, Defendants have committed the following violations of California Labor Code:

12. **Failure to pay wages to PAGA EMPLOYEES for workdays that Defendants failed to provide legally required and compliant rest periods:** PAGA EMPLOYEES regularly worked shifts of more than three-and-a-half (3.5) hours.

13. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code section 226.7; Wage Order 5 at § 12. Under California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7;

1 Wage Order 5 at § 12. Rest periods, insofar as practicable, shall be in the middle of each work
2 period. Wage Order 5 at § 12. Additionally, the rest period requirement “obligates employers to
3 permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security*
4 *Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve
5 employees of all duties and relinquish control over how employees spend their time. *Id.*

6
7 14. If the employer fails to authorize or permit a required rest period, the employer must
8 pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the
9 employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage
10 Order 5 at § 12.

11 15. In this case, Defendants failed to authorize or permit all legally required and
12 compliant rest periods to PAGA EMPLOYEES due to Defendants’ policies, practices, and/or
13 procedures including, but not limited to,

14 (a) Failure to provide PAGA EMPLOYEES with net 10-minute rest breaks for every 4
15 hours worked or major fraction thereof, including third rest breaks when employees worked shifts
16 longer than 10 hours.

17 16. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
18 procedure of failing to compensate PAGA EMPLOYEES with one (1) hour of pay at their regular
19 rate of pay for each workday they did not receive legally required and compliant rest periods, in
20 violation of Labor Code section 226.7.

21 17. Defendants’ foregoing policies, practices, and/or procedures resulted in PAGA
22 EMPLOYEES not receiving wages to compensate them for workdays in which Defendants did not
23 provide them with rest periods in compliance with California law.

24 18. **Failure to timely pay earned wages during employment:** In California, wages
25 must be paid at least twice during each calendar month on days designated in advance by the
26 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages earned
27 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and
28 the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any
calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll

1 periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7)
2 calendar days following the close of the payroll period in which wages were earned. Labor Code
3 section 204(d).

4 19. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
5 timely pay PAGA EMPLOYEES earned wages (including rest period premium wages), in violation
6 of Labor Code section 204. Defendants' aforementioned policies, practices, and/or procedures
7 resulted in their failure to pay PAGA EMPLOYEES their earned wages within the applicable time
8 frames outlined in Labor Code section 204.

9 20. **Secret payment of lower wages than designated by statute:** Labor Code section
10 223 provides that, where any statute or contract requires an employer to maintain the designated
11 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
12 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including by
13 failing to: pay rest break premiums as established by Labor Code section 226.7, and section 12 of
14 the applicable IWC Wage Orders, as incorporated by Labor Code section 1198, the Defendant
15 secretly paid a lower wage than designated by statute while purporting to pay the wages designated
16 by statute, in violation of Labor Code section 223.

17 21. **Failure to provide complete and accurate wage statements:** Labor Code section
18 226(a) provides, *inter alia*, that, upon paying an employee his or her wages, the employer must
19 "furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages
20 earned, (2) total hours worked by the employee, except for any employee whose compensation is
21 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
22 Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-
23 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
24 deductions, provided, that all deductions made on written orders of the employee may be aggregated
25 and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the
26 employee is paid, (7) the name of the employee and his or her social security number, (8) the name
27 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
28 the pay period and the corresponding number of hours worked at each hourly rate by the employee."

1 22. As a derivative of Plaintiff's allegations above, Defendants' failure to pay PAGA
2 EMPLOYEES all wages earned (including rest period premium wages) rendering PAGA
3 EMPLOYEES' wage statements inaccurate, in violation of Labor Code section 226(a)(1, 2, 5 & 9).

4 23. **Failure to pay employees all wages due at time of termination/resignation:** An
5 employer is required to pay all unpaid wages timely after an employee's employment ends. The
6 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
7 hours of resignation (Labor Code section 202).

8 24. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
9 PAGA EMPLOYEES all their earned wages (including rest period premium wages), Defendants
10 failed to pay those employees timely after each employee's termination and/or resignation, in
11 violation of Labor Code sections 201, 202, and 203.

12 25. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee,
13 on behalf of themselves and other current or former employees, to bring a civil action to recover
14 civil penalties against all Defendants pursuant to the procedures specified in Labor Code section
15 2699.3.

16 26. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
17 section 2699.3. On March 14, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
18 provided notice to Defendants by certified mail which provided notice of the specific provisions of
19 the Labor Code alleged to have been violated, including the facts and theories to support the
20 violations alleged.

21 27. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
22 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
23 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
24 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
25 to investigate Plaintiff's claims.

26 28. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
27 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), and
28 226.7., During Plaintiff's employment and continuing through the present, preceding Plaintiff

1 sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

2 a. For violations of Labor Code sections 201, 202, 203, 226(a), and/or 226.7;
3 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
4 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
5 violation [penalty amounts established by Labor Code section 2699(f)(2)].

6 b. For violations of Labor Code section 226(a), alternatively, two hundred fifty
7 dollars (\$250) for each employee for each pay period for the initial violation, and for each
8 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period
9 [penalty amounts established by Labor Code section 226.3].

10 c. For violations of Labor Code section 204, one hundred dollars (\$100) for
11 each failure to pay each employee in any initial violation, and for each subsequent violation, or any
12 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
13 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
14 section 210].

15 d. For violations of Labor Code section 223, one hundred dollars (\$100) for
16 each failure to pay each employee in any initial violation, and for each subsequent violation, or any
17 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
18 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
19 section 225.5].

20 29. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
21 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

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PRAYER FOR RELIEF

**WHEREFORE, PLAINTIFF, ON BEHALF OF PAGA EMPLOYEES, PRAYS AS
FOLLOWS:**

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the PAGA EMPLOYEES;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: May 20, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP



By: _____

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