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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NANCY MARTINEZ,

Plaintiff,

vs.

ASND, LLC; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **24STCV14151**

) **COMPLAINT FOR DAMAGES FOR:**

) **1) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA")**

COMES NOW Plaintiff, NANCY MARTINEZ (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants ASND, LLC; and DOES 1 to 25, inclusive (hereinafter collectively “ASND” or “Defendant(s)”) do business in the County of Los Angeles, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant ASND, LLC is a California Limited Liability Company, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

6. Plaintiff started working at ASND on or around December 2022 as a Certified Nurse Assistant (CNA). Plaintiff was classified as an hourly, non-exempt employee and her latest rate of pay was approximately \$21.00 per hour. Plaintiff's employment ended on or around February 28, 2024.

7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and

1 Other employees, it allows for suits broader than the specific violations the named employee
2 experienced. Therefore, even if the employee did not personally experience the Labor Code
3 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's
4 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
5 other employees, including ALL hourly, non-exempt employees who worked for ASND at all
6 of their healthcare locations in the state of California during the relevant PAGA period.

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8 9. It is Plaintiff's position that ASND has violated the following Labor Code Sections
9 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
10 hourly employees who worked for ASND at their various health facility locations in the State of
11 California during the relevant PAGA period.

12 10. ASND violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
13 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
14 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
15 ASND had a company policy wherein they would disproportionately round down the number of
16 hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being
17 paid for all hours worked. Furthermore, and to the extent that Plaintiff and other aggrieved
18 employees were forced to work through their meal periods and while "off the clock", the latter
19 was akin to a minimum wage violation. In addition, ASND asked their employees to watch
20 medical training videos on their personal cell phones while at home and while they were "off the
21 clock". Moreover, ASND failed to provide its employees with proper and accurate reporting time
22 pay.
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25 11. Due to the above "off the clock" violations, ASND also violated Labor Code §510
26 because it failed to pay Plaintiff and aggrieved employees overtime compensation, even though
27 they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout
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1 their employment. Aggrieved employees' actual work hours, especially those "off the clock"
2 hours, entitled them to overtime compensation, however, ASND did not compensate its hourly,
3 non-exempt employees with the correct amount of overtime due to the "off the clock" work and
4 time shaving as described above. Furthermore, ASND failed to include bonuses/incentive
5 payments in calculating employees' regular rate of pay for use in deciphering the correct
6 overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into
7 employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v.
8 Loews case.

10 12. ASND also violated Labor Code § 226.7 and the appropriate Industrial Welfare
11 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
12 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
13 portion thereof, throughout their employment. ASND did not completely relieve Plaintiff and
14 others of all duty during said rest periods. ASND did not pay to Plaintiff and others one
15 additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or
16 more statutory rest periods was not provided. It was not part of the company policy for employees
17 such as Plaintiff to take at least two rest breaks per regular shift. It was generally the case that
18 the workload with patients and work duties intensified after the lunch hour, which meant that
19 Plaintiff and others were generally not able to take a rest period in the afternoon. Furthermore,
20 even if Plaintiff and others were able to take a rest break, it would very often be interrupted by
21 patient needs and patient requests. As such, the concept of rest breaks was not consistently and
22 properly implemented as a matter of company policy. As such, the culture as well as the policies
23 and procedures of ASND did not lend itself to the employees consistently receiving multiple
24 statutory rest breaks wherein they were relieved of all work duties. The environment at ASND
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1 was not conducive to receiving multiple statutory rest breaks under California law and timely,
2 statutory rest breaks were not authorized or enforced.

3 13. ASND violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
4 Commission Wage Order no. 5 because it failed to provide Plaintiff and other hourly, non-
5 exempt employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
6 of work throughout their employment. ASND did not completely relieve Plaintiff and aggrieved
7 employees of all duty during said meal periods. ASND did not pay to Plaintiff and its hourly,
8 non-exempt employees one additional hour of pay at their regular rate of compensation for each
9 workday that one or more statutory meal periods was not provided. The hourly, non-exempt
10 employees, including Plaintiff, would often not be able to receive meal periods before the 5th
11 hour worked that were actually uninterrupted. The latter was due to the workload, being
12 understaffed, and due to being in a fast-paced medical services environment wherein Plaintiff
13 and others had to tend to patient needs, even if they were on a meal period. Like the rest breaks,
14 receiving a consistent thirty-minute uninterrupted and timely meal break was not part of the
15 company culture and was not enforced by ASND. Consequently, it was the normal practice and
16 custom of ASND not to authorize, permit, and enforce timely statutory meal periods. If ASND
17 had Plaintiff and aggrieved employees sign a meal period waiver, it would not be valid and
18 enforceable since Plaintiff and other employees generally worked more than a 6-hour shift. If
19 ASND had Plaintiff and aggrieved employees sign an on-duty meal period agreement wherein
20 Plaintiff and other employees agreed to work through their meal periods, it would be invalid and
21 unenforceable because the nature of employees' jobs as CNAs, nurses, etc. does not and did not
22 prevent them from taking a meal period and the company could have hired "breakers" to relieve
23 them of their job duties so that they can actually take a timely, uninterrupted meal period.
24 Moreover, any such "on duty" meal period agreement did not allow for employees to revoke
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1 such an agreement even if it was signed. As such, aggrieved employees did not always receive
2 statutory, timely meal periods during their employment. To the extent that ASND argues that
3 employees receive meal break premium pay for missed meal periods, that argument is
4 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
5 themselves, irrespective of whether an employee received the premium payment for a missed,
6 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
7 “section 226.7 does not give employers a lawful choice between providing *either* meal and rest
8 breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
9 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
10 violation; the employer has still committed a violation even if the remedy for the violation has
11 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
12 such, the work environment and culture at ASND was not conducive to receiving consistent,
13 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
14 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
15 incentive payments as well as overtime compensation.

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18 14. Furthermore, during the relevant time period, and due to the above labor code violations,
19 ASND failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to
20 them within any time period specified by California Labor Code section 204. Since Plaintiff was
21 not compensated for her “off the clock” work and since Plaintiff did not receive proper and
22 complete meal and/or rest break premiums, Plaintiff would still be owed wages pursuant to Labor
23 Code Section 204. ASND was also in violation of California Labor Code section 226(a) by
24 failing to include pertinent information on the wage statements, including but not limited to, the
25 correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages
26 earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the
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1 correct start and end of the pay period, all employee identifying information, the correct and
2 complete name and address of the legal employer, and reimbursement for business expenses,
3 among others. As such, ASND did not provide Plaintiff and other similarly situated aggrieved
4 employees with complete, accurate itemized wage statements. During the relevant time period,
5 ASND also failed to keep accurate and complete payroll records showing the actual hours
6 worked per day and the wages paid to Plaintiff and others pursuant to California Labor Code
7 sections 1174(d).

9 15. ASND also violated Labor Code § 203 because it willfully failed to pay aggrieved
10 employees earned and due wages upon separation of employment, either immediately upon
11 involuntary termination, or within 72 hours of resignation. These earned but unpaid wages
12 include compensation for all hours worked, including minimum wages, overtime compensation,
13 and premium pay for missed meal and rest breaks.

14 16. During the relevant time period, Plaintiff and other aggrieved employees incurred
15 necessary, business-related expenses and costs that were not reimbursed by ASND. These costs
16 include, but are not limited to, personal cell phones for work purposes and uniforms, including
17 scrubs, shoes, and medical equipment to effectuate job duties. Accordingly, ASND was in
18 violation of California Labor Code sections 2800 and 2802.

20 17. Furthermore, ASND did not provide proper and correct/accurate sick pay that was also
21 delineated on employee pay stubs and also failed to provide proper sick leave in violation of
22 Labor Code sections 233 and 246. In addition, ASND failed to provide proper rest facilities and
23 suitable seating under IWC Wage Order no. 5-2001.

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27 **FIRST CAUSE OF ACTION**

PRIVATE ATTORNEYS GENERAL ACT
Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and IWC Wage Order 5-2001)

(Plaintiff against All Named Defendants and all DOE defendants)

18. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 17, inclusive, of this Complaint as though fully set forth herein.

19. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated March 7, 2024, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

20. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

21. Plaintiff therefore has exhausted all administrative remedies required of her under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants’ violations of the Labor Code.

22. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

23. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of other current and former employees, including all current and former hourly, non-exempt employees who worked for ASND in the State of California at all of their locations during the applicable PAGA Period.

24. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties

1 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
2 numerous provisions of the California Labor Code as alleged in this Complaint.

3 25. Plaintiff therefore has exhausted all administrative remedies required of her under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
5 this cause of action and pursue penalties in a representative action for Defendants' violations of
6 the Labor Code.

7 26. California Labor Code section 2699 et seq. imposes penalties upon culpable
8 Defendants for violating the Labor Code.

9 27. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
10 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
11 seeking individual penalties/victim specific relief or underpaid wages for herself or other
12 employees under this specific PAGA cause of action.

13 28. Specifically, Plaintiff seeks penalties under California Labor Code
14 section 2699, for the following:

15 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
16 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any
17 other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts
18 alleged in this Complaint.

19 29. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
20 costs, and civil penalties on behalf of other current and former aggrieved employees as alleged
21 herein in an amount to be shown according to proof at trial and within the jurisdictional limits
22 of this Court.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
25 follows:

- 26 1. For the imposition of civil penalties;
- 27 2. For maximum civil penalties available under Labor Code Section 2699 against
28 Defendants in a manner and amount authorized by that statute, as described more

1 particularly in the Complaint and representative PAGA claims;

2 3. For all costs and disbursements incurred in this suit;

3 4. Reasonable attorney's fees where available by law, including but not limited to, pursuant
4 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other
5 applicable laws; and

6 5. For such other and further relief as this Court may deem proper.

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8 DATED: June 6, 2024

MESSRELIAN LAW INC.

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10 By  _____

11 Harout Messrelian, Esq.

12 Attorneys for Plaintiff Nancy Martinez
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