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County of Santa Clara
24CV449462
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SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

SIMA DE LA ROSA, an individual,

Plaintiff(s),

v.

SILVER GENERATIONS LLC, a
California Limited Liability Company,
JUSTIN LADWIG, an individual,
JUVELYN IRISH LADWIG, an
individual, DOES 1-20, inclusive,

Defendant(s).

Case No.: 24CV449462

**PLAINTIFF'S COMPLAINT FOR
DAMAGES**

1. **Failure to Pay Minimum Wage**
(Lab. Code, §§ 1194, 1194.2, Wage Orders)
2. **Failure to Pay Overtime** (Lab. Code, §§ 510, 1194; Wage Orders)
3. **Failure to Provide Meal Breaks**
(Labor Code § 512, Wage Orders)
4. **Failure to Provide Rest Breaks**
(Labor Code § 226.7, Wage Orders)
5. **Inaccurate Wage Statement Penalties**
6. **Failure to Timely Pay Wages During Employment** (Lab. Code, §§ 204, 210)
7. **Waiting-Time Penalties** (Lab. Code, §§ 201-203)
8. **Failure to Reimburse Expenses**
(Lab. Code § 2802)
9. **Violation of Unfair Competition Law** (Bus. & Prof. Code § 17200)

PLAINTIFF DEMANDS JURY TRIAL

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I. INTRODUCTION

1. Defendants SILVER GENERATIONS LLC, JUSTIN LADWIG, and JUELYN IRISH LADWIG operate a residential elder care facility in San Jose, California. These residents suffer from medical conditions which require that they have around-the-clock supervision. Plaintiff SIMA DE LA ROSA worked for Defendants as a care provider. During the relevant time period Plaintiff routinely worked shifts well in excess of 8 hours per day and more than 40 hours per week. Despite this Defendants failed to pay Plaintiff for all hours worked, for overtime hours worked, or for missed meal breaks or rest breaks. Plaintiff files suit to seek recovery of unpaid wages, interest, penalties, and attorney's fees and costs.

II. JURISDICTION & VENUE

2. This Court has subject matter jurisdiction to hear this case because the amount in controversy exceeds this Court's jurisdictional minimum and because Defendants were residents of, or were doing business in, the State of California, County of Santa Clara.

3. Venue in this Court is proper pursuant to sections 395 and 395.5 of the Code of Civil Procedure in that at all relevant times herein, one or more Defendants conducted substantial business and/or committed violations of law in the County of Santa Clara.

III. PARTIES

4. Plaintiff SIMA DE LA ROSA is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was a California resident, employed by Defendants in the County of Santa Clara, California.

5. On information and belief, Plaintiffs allege that Defendant SILVER GENERATIONS LLC is a California limited liability company with its principal place of business in the county of San Jose, California.

6. On information and belief, Plaintiffs allege that Defendant JUSTIN LADWIG is an individual over the age of eighteen (18). At all relevant times herein, Defendant was a California resident living and/or doing business in the County of Santa Clara, California.

7. On information and belief, Plaintiffs allege that Defendant JUELYN IRISH LADWIG is an individual over the age of eighteen (18). At all relevant times herein, Defendant

1 was a California resident living and/or doing business in the County of Santa Clara, California.

2 8. On information and belief, Plaintiffs allege that Defendants JUSTIN LADWIG
3 and JUELYN IRISH LADWIG are and were owners, directors, officers, and/or managing
4 agents of Defendant SILVER GENERATIONS LLC and, as such, each of these Defendants is
5 believed to be an “other person acting on behalf of an employer” within the meaning of Labor
6 Code §§ 558 and 558.1.

7 9. Plaintiff does not know the true names and capacities of Defendants sued in this
8 Complaint as DOES 1 through 20, inclusive, and therefore sues these Defendants by fictitious
9 names. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1
10 through 20, inclusive, when ascertained. Plaintiff is informed and believes, and on that basis
11 alleges, that each of the Defendants named herein as DOES 1 through 20, inclusive, is
12 responsible in some manner for the occurrence, injury, and other damages alleged in this
13 Complaint.

14 10. Plaintiff is informed and believes, and on that basis alleges, that each Defendant
15 was in some manner responsible for the acts and damages alleged herein, and/or are indebted to
16 Plaintiff as alleged herein, and that each Defendant was the agent, employer and co-conspirator
17 of each other Defendant, and was acting in the course and scope of such agency and conspiracy.
18 In this Complaint where Plaintiff refers to Defendant singularly, such reference shall be
19 construed to be a reference to all Defendants named herein, including those named fictitiously.

20 **IV. FACTUAL ALLEGATIONS**

21 11. Defendants own and operate a residential elder care business with its principal
22 place of business located in San Jose, California. Plaintiff was employed by Defendants as a care
23 provider from approximately October 2022 to November 2023.

24 12. Plaintiff was required to remain on-site and available to assist residents during
25 the entirety of her shift. Plaintiff was typically scheduled to work 11 or more hours per workday,
26 at least 6 days per week.

27 13. Although Plaintiff was a non-exempt employee, she was not paid at the
28 applicable overtime rate for hours worked in excess of eight (8) hours in a workday, more than

1 forty (40) hours in a workweek, more than twelve (12) hours in a workday, or more than eight
2 (8) hours on the seventh day of a workweek.

3 14. Defendants also failed to record all hours worked by Plaintiff, and failed to pay
4 Plaintiff for all hours worked.

5 15. Defendants also failed to provide Plaintiff the opportunity to take code-compliant
6 meal and rest periods. Defendants did not provide Plaintiff any additional pay for missed meal
7 periods or rest periods.

8 16. Defendants also failed to provide wage statements to Plaintiff accurately
9 reflecting the number of regular and overtime hours worked, corresponding applicable hourly
10 pay rates, the correct amount of gross and net wages, and pay premiums for missed meal and
11 rest periods.

12 17. Plaintiff was also required to incur expenses for the performance of her job
13 duties, including personal mobile phone expenses, which expenses were not reimbursed by
14 Defendants.

15 18. Plaintiff's employment ended in or around November 2023. Upon separation or
16 discharge, Defendants also failed to pay Plaintiff all wages owed, including minimum wages,
17 overtime wages, missed meal and rest break premiums, and unreimbursed expenses, which
18 amounts remain outstanding to this date.

19 19. Plaintiff now brings this complaint in order to recover her rightfully earned
20 compensation, as well as penalties and interest and all other applicable relief.

21 **V. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **Failure to Pay Minimum Wage**

24 **(Lab. Code, §§ 1194, 1194.2, Wage Orders)**

25 **(As to All Defendants)**

26 20. Plaintiff incorporates in this cause of action each and every allegation of the
27 preceding paragraphs, as though fully set forth herein.

28 21. Labor Code §§ 1194, 1197, 1197.1 and the applicable Industrial Welfare

Commission (“IWC”) Wage Order require employers to pay an amount equal to or greater than the minimum wage for each hour worked.

22. Defendants failed to pay Plaintiff at least the minimum wage for each hour worked.

23. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff has suffered damages, including loss of earnings for time worked on behalf of Defendants.

24. Plaintiff requests relief as described below.

SECOND CAUSE OF ACTION
Failure to Pay Overtime
(Lab. Code, §§ 510, 1194; Wage Orders)
(As to all Defendants)

25. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

26. Labor Code § 510 requires employers to pay overtime compensation to all employees, unless they are exempt from the overtime pay requirements. During all periods of employment, Plaintiff was a non-exempt employee.

27. Plaintiff worked in excess of eight (8) hours in a workday, twelve (12) hours in a workday, forty (40) hours in a workweek, and/or eight (8) hours on the seventh (7th) day of the workweek.

28. Defendants failed or otherwise refused to pay Plaintiff overtime compensation for all overtime hours worked in the manner required by California law.

29. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff has suffered damages, including loss of earnings for hours of overtime worked on behalf of Defendants.

30. Plaintiff requests relief as described below.

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THIRD CAUSE OF ACTION
Failure to Provide Meal Breaks
(Lab. Code, § 512, Wage Orders)
(As to All Defendants)

31. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

32. The applicable Wage Order and Labor Code section 512 provide that all non-exempt employees are entitled to a 30-minute, uninterrupted meal break for every 5-hour shift worked by the employee and a second meal period for shifts lasting over ten (10) hours.

33. An employer's failure to provide an opportunity to take a meal break entitles the employee to an hour of pay for each day an employer fails to provide an opportunity to take a meal break.

34. At all times herein relevant, Plaintiff was non-exempt and entitled to meal breaks.

35. At all times herein relevant, Defendants employed Plaintiff for periods of five (5) hours or more without compliant meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff worked more than ten (10) hours in a day. Plaintiff did not waive the right to meal periods throughout her employment.

36. Defendants further failed to compensate Plaintiff for the premium wage(s) owed resulting from their failure to provide the opportunity to take a legally compliant meal break.

37. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff has suffered damages, including a loss of wages.

38. Plaintiff requests relief as described below.

FOURTH CAUSE OF ACTION
Failure to Provide Rest Breaks
(Labor Code § 226.7, Wage Orders)
(As to All Defendants)

39. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

40. The applicable Wage Order and Labor Code section 226.7 provides that all non-exempt employees are entitled to at least a 10-minute rest break for each work period of more

1 than four (4) hours, or major fraction thereof.

2 41. An employer's failure to provide an opportunity to take a rest break entitles the
3 employee an hour of pay for each day an employer fails to provide an opportunity to take a rest
4 break.

5 42. At all times relevant, Plaintiff was non-exempt and entitled to rest breaks.

6 43. At all times relevant, Defendants failed to authorize and permit Plaintiff to take
7 rest periods of at least 10 minutes for each work period of more than four (4) hours, or major
8 fraction thereof.

9 44. Defendants further failed to compensate Plaintiff for the premium wage(s) owed
10 resulting from their failure to provide the opportunity to take rest breaks.

11 45. As a direct and proximate result of Defendants' unlawful conduct, as set forth
12 herein, Plaintiff has suffered damages, including loss a loss of wages.

13 46. Plaintiff requests relief as described below.

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15 **FIFTH CAUSE OF ACTION**

16 **Inaccurate Wage Statement Penalties**

17 **(Lab. Code, § 226)**

18 **(As to All Defendants)**

19 47. Plaintiff incorporates in this cause of action each and every allegation of the
20 preceding paragraphs, as though fully set forth herein.

21 48. Labor Code § 226(a) requires employers to provide employees with regular
22 itemized written statements showing, among other things, total hours worked, all applicable
23 hourly rates during the pay period, and the corresponding number of hours worked at each rate
24 by the employee. Defendants knowingly and intentionally failed to provide timely, accurate
25 itemized wage statements including this required information.

26 49. Labor Code § 226(e) provides that an employee suffering injury as a result of a
27 knowing and intentional failure by an employer to comply with section 226(a) is entitled to
28 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period,

1 up to a maximum amount of \$4,000.

2 50. Labor Code § 226(e)(2) provides that an employee is deemed to suffer injury for
3 the purposes of Labor Code § 226 if the employer fails to provide the employee his or her wage
4 statement.

5 51. Defendants knowingly and intentionally failed to provide Plaintiff with accurate
6 itemized wage statements.

7 52. Plaintiff requests relief as described below.

8 **SIXTH CAUSE OF ACTION**
9 **Failure to Timely Pay Wages During Employment**
10 **(Lab. Code, §§ 204, 210)**
11 **(As to All Defendants)**

12 53. Plaintiff incorporates in this cause of action each and every allegation of the
13 preceding paragraphs, as though fully set forth herein.

14 54. Labor Code section 204 requires employees to be paid wages at least twice per
15 month. If an employer fails to pay wages during the proper pay period, the employee is entitled
16 to a penalty of \$100 for an initial violation and \$200 for each subsequent or willful, or
17 intentional violation. Additionally, the employee is entitled to 25% of the amount unlawfully
18 withheld.

19 55. Defendants failed to properly and timely compensate Plaintiff all wages earned
20 during Plaintiff's pay period(s).

21 56. Defendants' acts were willful and/or intentional.

22 57. As a result of Defendants' conduct, Plaintiff is entitled to the penalty set forth in
23 section 210 of the Labor Code.

24 58. Plaintiff requests relief as described below.

25 **SEVENTH CAUSE OF ACTION**
26 **Waiting-Time Penalties**
27 **(Lab. Code, §§ 201-203)**
28 **(As to All Defendants)**

59. Plaintiff incorporates in this cause of action each and every allegation of the
preceding paragraphs, as though fully set forth herein.

1 60. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
2 due immediately upon discharge, or within seventy-two (72) hours of quitting without notice.
3 Labor Code § 203 provides that where an employer willfully fails to make such timely payment,
4 the employer must, as a penalty, continue to pay the subject employees' wages until the back
5 wages are paid in full or an action is commenced, up to a maximum of thirty (30) days' wages.

6 61. Plaintiff was discharged from her employment without being paid all wages that
7 were due to her within the time required by Labor Code §§ 201 and 202. Defendants' failure to
8 pay these wages has been and continues to be willful.

9 62. As a result of Defendants' conduct, Plaintiff is entitled to waiting time penalties
10 in the amount of up to thirty (30) days' wages under Labor Code § 203.

11 63. Plaintiff requests relief as described below.

12 **EIGHTH CAUSE OF ACTION**
13 **Failure to Reimburse Expenses**
14 **(Lab. Code, § 2802)**
 (As to All Defendants)

15 64. Plaintiff incorporates in this cause of action each and every allegation of the
16 preceding paragraphs, as though fully set forth herein.

17 65. California Labor Code section 2802(a) states that "An employer shall indemnify
18 his or her employee for all necessary expenditures or losses incurred by the employee in direct
19 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
20 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
21 believed them to be unlawful."

22 66. Defendants required Plaintiff to use her personal mobile phone for work-related
23 purposes, but failed to reimburse Plaintiff for such use.

24 67. Plaintiff requests relief as described below.

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NINTH CAUSE OF ACTION
Violation of Unfair Competition Law
(Business & Professions Code § 17200, et seq.)
(As to All Defendants)

1. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

2. Defendants' conduct, as alleged herein, constitutes an unlawful, unfair, and/or fraudulent business practices, as set forth in Business & Professions Code section 17200. Defendants conducted business activities while failing to comply with the legal mandates cited herein. Plaintiff suffered injury in fact and lost money as a result of Defendants' unfair competition.

3. As a result of Defendants' unlawful and unfair business practices, Plaintiff is entitled to and does seek restitution, and other appropriate relief available under Business & Professions Code § 17203, on Plaintiff's own behalf for four (4) years from the filing of this Action.

4. Plaintiff requests relief as described below.

PRAYER

1. For general damages according to proof in an amount to exceed \$1,000,000;

2. For special damages according to proof in an amount to exceed \$1,000,000;

3. For compensatory damages and unpaid wages;

4. For exemplary damages, according to proof;

5. For pre-judgment, post-judgment, and statutory interest and all amounts subject herein;

6. For attorney's fees according to statute including Labor Code sections 218.5 and 1194, Code of Civil Procedure section 1021.5, and any other relevant provision under California law that provides for the recovery of attorney's fees;

7. For costs of suit incurred in this action;

8. For penalties according to statute;

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- 9. For injunctive relief;
- 10. For declaratory relief; and
- 11. For all other relief that this Court deems just and proper.

DATED: October 14, 2024

DREW LEWIS, PC

By: _____
Drew Lewis
Attorney for Plaintiff(s)