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PAMELA GEBHARD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

PAMELA GEBHARD, in her individual and representative capacity,

Plaintiff,

vs.

DR. LORI L. FLOYD, O.D., INC., a California corporation; LORI FLOYD, an individual; and DOES 1-10, Inclusive,

Defendants.

Case No. 30-2024-01404680-CU-WT-WJC
Hon. Richard Lee
Dept.: W15

FIRST AMENDED COMPLAINT FOR:

(1) WHISTLEBLOWER RETALIATION
(2) FAILURE TO PAY OVERTIME
(3) FAILURE TO PAY MINIMUM WAGES
(4) FAILURE TO PROVIDE PROPER MEAL PERIODS
(5) FAILURE TO PROVIDE PROPER REST PERIODS
(6) FAILURE TO PROVIDE PROPER WAGE STATEMENTS
(7) FAILURE TO TIMELY PAY WAGES UPON TERMINATION
(8) DISABILITY DISCRIMINATION
(9) DISABILITY DISCRIMINATION – REASONABLE ACCOMMODATION
(10) DISABILITY DISCRIMINATION – RETALIATION
(11) FAILURE TO PREVENT DISCRIMINATION
(12) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
(13) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 [Lab. Code §2698 *et seq.*]

JURY TRIAL DEMANDED

Complaint Filed: June 6, 2024
Trial Date: None set

Plaintiff PAMELA GEBHARD ("Plaintiff") is informed and believes and hereby alleges as follows:

FACTUAL BACKGROUND

1. Plaintiff worked as an optometric assistant for corporate defendant DR. LORI L. FLOYD, O.D., INC. ("Employer" or "Employer Defendant"), which was founded, owned, and managed by individual defendant Lori Floyd ("Dr. Floyd") for over eight (8) years, which is a non-exempt position under California law. She worked with at least four other employees, most of whom are likely subject to many of the same basic wage and hour violations noted herein.

2. Employer's written "Office Manual" document, which purports to set forth policies of the office, contains some language relevant to Plaintiff's claims, including: (i) under the "Breaks" section, stating "A one hour lunch break is allowed on weekdays" but not mentioning providing any rest periods or meal periods for weekend work; (ii) under the "Hours of Work" section, stating "All employees are expected to arrive 10 minutes early to prepare the office for business;" (iii) under the "Sick Leave" and "Reasons for Dismissal" sections, stating: "Any more than 10 sick days in one year will be cause for review and possible dismissal;" and (iv) under the "Vacations" section, stating that a full-time employee from "[f]ive to ten" years employment is entitled to "10 days/year = 74 hours" of paid vacation" and stating that "[v]acation days are not cumulative – they must be taken every year." A true and correct copy of relevant pages of this Office Manual is attached as **Exhibit 1**.

3. Plaintiff regularly started working 10 minutes before her scheduled shifts (per policy), she was never provided any 10-minute rest periods (per policy not providing for rest periods), and she often worked through her meal period and/or was not allowed a compliant meal period after working 5 hours (particularly on Saturdays). She was told not to record her actual time worked, but instead to record only scheduled work times on her timesheets. She was not paid minimum wages or overtime for some of her actual work. She was never paid overtime and never paid any premium wages for her many non-compliant rest periods and meal periods.

4. During her employment, Plaintiff had previously raised questions about why she and others were not paid for their actual time worked, including not being paid for starting work 10 minutes before scheduled shifts and not receiving rest periods. Such questions visibly upset Dr. Floyd. In

approximately January 2024, Dr. Floyd notified Plaintiff and others that she was going to convert two earned vacation days of employees “into” paid sick days to comply with California law regarding paid sick leave. Plaintiff questioned the propriety of this because it basically took away her earned and vested vacation wages. In response, Dr. Floyd got very angry and said she “had” to give 40 hours of sick pay. However, notwithstanding her active hostility toward Plaintiff for complaining, Dr. Floyd ultimately reversed this effort to basically convert employees’ vested vacation wages to meet a different legal requirement to provide paid sick leave.

5. On or about April 23, 2024, Plaintiff questioned Dr. Floyd’s failure to pay her for all time worked, including for time worked on Saturdays. After Dr. Floyd tried to “explain” her “system” to Plaintiff orally, Plaintiff was told to put her question/complaint in writing and request a written response, which she did in the April 23, 2024, writing attached as **Exhibit 2**. In response, Dr. Floyd became visibly angry at Plaintiff and started slamming doors and throwing things at the office. As discussed below, Dr. Floyd peremptorily fired Plaintiff three days later – i.e., on Friday, April 26, 2024.

6. In late 2023, Plaintiff notified Dr. Floyd of her back-related disability and her potential need for accommodation. Although Plaintiff shared basic information sufficient to notify Defendants of her back disability, Dr. Floyd made no effort to engage in the interactive process. Rather, Dr. Floyd retaliated against Plaintiff based on her need for reasonable accommodations in various ways, including: (i) engaging in a frantic campaign of bogus “write ups” in the March-April 2024 period to try to “create a record” to terminate Plaintiff; and (ii) terminating Plaintiff’s employment on April 26, 2024, two days after Plaintiff requested an accommodation for going to her doctor and receiving medications for her back disability.

7. In March-April 2024, after Plaintiff had worked for Dr. Floyd for nearly eight years (receiving a raise in May 2022 and in increased schedule in March 2023), Dr. Floyd started secretly putting bogus “write ups” into Plaintiff’s personnel file, purporting to cite specious “performance issues.” These bogus “write ups” were never presented to Plaintiff, and they usually involved false or trumped up supposed “performance issues” designed to create a pretext for getting rid of Plaintiff in part because she had recently become disabled and needed certain reasonable accommodations, such as being allowed to go to doctors’ appointments.

8. On or about Wednesday, April 24, 2024, Plaintiff went to urgent care because of her back disability. Dr. Floyd's Office Manager (Ms. Perez) told Plaintiff she "must" return to work by 2:00 p.m. that day or she would be deemed (falsely) to have "abandoned" her job. But Plaintiff could not return to work that day because she had been given medications that prevented her from driving a motor vehicle safely. On Plaintiff's next workday, Friday, April 26, 2024, Dr. Floyd peremptorily and angrily fired Plaintiff: (i) in retaliation for her questions and complaints about her unpaid wages noted herein; and (ii) because she had a back disability that required reasonable accommodation.

PRELIMINARY ALLEGATIONS

9. This Court has jurisdiction over this matter under PAGA and this Court's general powers granted by statutory law and the California Constitution.

10. Plaintiff PAMELA GEBHARD is, and at relevant times was, an individual domiciled in the State of California and a citizen of the State of California who worked as a non-exempt employee at Defendants' Mission Viejo, California location.

11. Defendant DR. LORI L. FLOYD, O.D., INC. is a California Corporation doing business in the County of Orange, California.

12. Defendant LORI FLOYD is, and at relevant times was, an individual domiciled in the State of California and a citizen of the State of California who owned and managed Plaintiff at Defendants' Mission Viejo, California location during all relevant times. Pursuant to Labor Code section 558.1, Dr. Floyd constitutes an "other person acting on behalf of an employer" for the alleged wage and hour violations because she is an "owner, director, officer [and] managing agent" of the corporate employer, DR. LORI L. FLOYD, O.D., INC. *See* Cal. Lab. Code § 558.1(a)-(b).

13. Venue is proper because Plaintiff worked and resided in Orange, California and a substantial portion of the events at issue in this matter occurred within Orange County, California.

14. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

15. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants. Defendants Employer Defendant, Dr. Floyd, and Doe Defendants are hereafter collectively referred to as "Defendants."

16. At all relevant times, Defendants were, and are, legally responsible for all of the unlawful conduct, policies, practices, acts and omissions complained of herein as the employer of Plaintiff and Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of *respondeat superior*. The conduct of Defendants' managers and supervisors was at all relevant times undertaken as employees of Defendants, acting within the scope of their employment or authority in all of the unlawful activities described herein.

17. Plaintiff presented an administrative claim to the Department of Fair Employment and Housing ("DFEH") and obtained a right to sue letter from the DFEH regarding all of the relevant factual allegations and legal claims asserted. The right to sue letter is attached as **Exhibit 3**.

18. Plaintiff gave written notice by certified mail of Defendant's violations of various provisions of the California Labor Code as alleged in this complaint to the Labor and Workforce Development Agency ("LWDA") and Defendants, which is attached hereto as **Exhibit 4**.

19. The LWDA did not provide notice of its intention to investigate Defendants' violations.

FIRST CAUSE OF ACTION

Violation of California's Whistleblower Laws [Lab. Code §§ 1102.5, 98.6]

(By Plaintiff Against Employer Defendant And Doe Defendants)

20. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

21. At all relevant times, Labor Code section 1102.5 has precluded, among other things, retaliating "against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or

noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation or state or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." Cal. Lab. Code 1102.5(b).

22. The protections of section 1102.5 apply to employees. *See e.g., Bennett v. Ranch California Water Dist.*, 35 Cal.App.5th 908, 911 (2019). To qualify as "protected activity," an employee need only disclose a suspicion of a potential legal violation that is held in good faith and reasonable, regardless of whether it ultimately proves correct. *See e.g., Diego v. Pilgrim United Church of Christ*, 231 Cal.4th 913, 922 (2014). The disclosure does not need to be the first or only report of suspected illegal activity to qualify as "protected activity." *Hager v. County of Los Angeles*, 228 Cal.4th 1538, 1551-52 (2014); and "protected activity" need not implicate nor concern a violation of public policy. *See Cardenas v. M. Fanaian, D.D.S., Inc.,* 194 Cal.Rptr.3d 1, 9-10, review granted and opinion superseded sub nom. *Cardenas v. Fanaian*, 362 P.3d 431 (Cal. 2015), and review dismissed on Feb. 24, 2016.

23. A qualifying "adverse employment action" is any action or course or pattern of conduct that, taken as a whole, materially and adversely affects the terms, conditions, or privileges of employment. *See Yanowitz v. L'Oreal USA, Inc.,* 36 Cal.4th 1028, 1052-56 (2005). A determination of whether an adverse employment action occurred must "take into consideration the unique circumstances of the affected employee as well as the workplace conduct of the claims." *Whitehall v. County of San Bernardino*, 17 Cal.App.5th 352, 366-67 (2017). Termination of employment plainly constitutes an adverse employment action.

24. Similarly, California Labor Code section 98.6(a) prohibits an employer from discharging, discriminating, retaliating against, or taking any adverse action against any employee who, among other things, "made a written or oral complaint that he or she is owed unpaid wages . . . or because of the exercise by the employee . . . of any rights afforded him or her." Section 98.6(b) provides that any employee who is discharged, retaliated against, or subject to an adverse action for any conduct delineated in Chapter 4 of the Labor Code [which includes section 98.6(a)] "shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer."

25. Plaintiff questioned and/or complained to Defendants regarding violations of California wage and hour laws for unpaid wages and otherwise exercised her rights to be paid for wages under the Labor Code. Plaintiff also requested certain reasonable accommodations for her back disabilities pursuant to the FEHA.

26. Defendants terminated Plaintiff's employment on or about April 26, 2024, in direct retaliation for her aforementioned actions.

27. As a direct and proximate result of Defendants' illegal termination of Plaintiff's employment, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

28. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Labor Code section 1102.5 and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

29. Defendants are also liable for a $10,000 per violation penalty pursuant to Labor Code section 1102.5 and/or other applicable law.

30. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

SECOND CAUSE OF ACTION

Failure To Pay Overtime Wages [Lab. Code §§ 510, 558, 1194]

(By Plaintiff Against All Defendants)

31. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

32. Defendants have failed to maintain a policy that compensates Plaintiff and other non-exempt employees for all hours worked, including overtime.

33. Defendants have required Plaintiff to work hours qualifying her for significant overtime compensation but has not paid her overtime compensation. As a result, Plaintiff has been denied "the unpaid balance of the full amount of this . . . overtime compensation" as required by Labor Code section 1194.

34. As a result of these violations and violations of the Labor Code sections 510, 558, 1194, and applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, Plaintiff and other non-exempt employees are entitled to wages, penalties, interest and attorney's fees.

THIRD CAUSE OF ACTION

Failure To Pay Minimum and/or Straight Wages [Lab. Code §§ 204, 1182.12, 1194, 1194.2, 1197, 1197.1]

(By Plaintiff Against All Defendants)

35. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

36. Defendants regularly failed to pay Plaintiff earned minimum wages and straight time wages by, among other things, failing to pay them for work done before scheduled shifts and during meal periods and before and after work shifts as required by Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and applicable wage orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

37. As a result of violations of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, 1199 and applicable wage orders for failure to pay minimum wage, Employer is liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2698 *et seq*.

FOURTH CAUSE OF ACTION

Failure To Provide Proper Meal Periods [Lab. Code §§ 226.7, 512, 1194]

(By Plaintiff Against All Defendants)

38. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

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39. For the relevant time period, Defendants were required to provide Plaintiff with meal periods that comply with the California Labor Code and applicable regulations and wage orders, including Labor Code sections 226.7 and 512.

40. Defendants regularly failed to provide, and in fact denied, Plaintiff with statutorily compliant meal periods. Among other things, Defendants: (i) regularly designed and staffed shifts in a way that did not allow Plaintiff to timely take adequate off-duty meal periods mandated by law; (ii) failed to pay Plaintiff the premium compensation mandated by Labor Code section 226.7; and (iii) discouraged the taking of proper meal breaks via a companywide, systematic policy.

41. Plaintiff is informed and believes and thereon alleges that Defendants willfully failed to pay Plaintiff the proper meal period premium wages for all non-compliant or missed meal periods.

<u>FIFTH CAUSE OF ACTION</u>

Failure To Provide Proper Rest Periods [Lab. Code §§ 226.7, 512, 1194]

(By Plaintiff Against All Defendants)

42. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

43. For the relevant time period, Defendants were required to provide Plaintiff with rest periods that comply with the Labor Code and applicable regulations and Wage Orders, including Labor Code section 226.7.

44. Defendants regularly failed to provide, and in fact denied, Plaintiff with statutorily compliant rest periods. Among other things, Defendants: (i) regularly designed and staffed shifts in a way that did not allow Plaintiff to timely take adequate off-duty rest periods mandated by law; (ii) failed to pay Plaintiff the premium compensation mandated by Labor Code section 226.7; and (iii) otherwise deterred and prevented employees from taking paid 10-minute rest breaks as mandated under California law. Plaintiff is informed and believes and thereon alleges that Defendants willfully failed to pay Plaintiff the proper rest period premium wages for all non-compliant or missed rest periods.

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SIXTH CAUSE OF ACTION

Failure to Provide Accurate Wage Statements [Labor Code §§ 226, 226.3]

(By Plaintiff Against All Defendants)

45. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

46. California Labor Code section 226(a) sets forth reporting requirements for Employers when they pay wages: "Every Defendants shall . . . at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . (5) net wages earned . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Cal. Lab. Code § 226(a). "An employee suffering injury as a result of a knowing and intentional failure by an Defendants to comply with subdivision (a) shall be entitled to 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) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." Cal. Lab. Code § 226(e)(1). "An employee is deemed to suffer injury for purposes of this subdivision if the Defendants fails to provide accurate and complete information as required by . . . subdivision (a) . . . ."

47. During the relevant time period, Defendants have not furnished Plaintiff with timely itemized wage statements accurately showing, among other things, the employer's address, gross wages earned, total hours worked, net wages earned, and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate of Plaintiff.

48. Defendants intentionally failed to furnish Plaintiff accurate wage statements upon each payment of wages, in violation of California Labor Code section 226(a). Plaintiff was injured and damaged by these failures because, among other things, these failures led her to believe she was not entitled to overtime wages or paid premium pay wages for non-compliant meal periods and rest periods, although she was so entitled.

49. Pursuant to Labor Code sections 204, 218.5, and 226, or other applicable law, Plaintiff is entitled to recover her regular wages, as well as penalties, interest, injunctive relief, costs, and attorneys' fees.

SEVENTH CAUSE OF ACTION

Failure to Pay Wages Upon Termination [Labor Code §§ 201-203, 227.3, 1199]

(By Plaintiff Against All Defendants)

50. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

51. Labor Code section 201 provides "if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 provides "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting." Labor Code section 208 requires that all final wages be paid to an employee who is terminated at the place of discharge and to an employee who voluntarily resigns at the place where the employee has been working.

52. Defendants have violated Labor Code sections 201 and 202 by willfully failing to timely pay all compensation due and owing to Plaintiff at the time employment was terminated because of, as noted herein, said unpaid overtime wages, regular wages, minimum wages, one-hour penalties for missed, interrupted, or untimely meal periods and rest periods, and unused and vested vacation pay and sick pay, among others.

53. Labor Code sections 201 and 227.3 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. Labor Code section 202 requires an employer to pay all compensation due and owing to an employee who quits within 72 hours of that employee quitting, unless the employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work.

54. Until 2023 Defendants had an illegal "use-it-or-lose-it" paid vacation policy which essentially causes the forfeiture of earned wages. *See e.g., Iljas v. Ripley Ent. Inc.,* 403 F. Supp. 3d 793,

801 (N.D. Cal. 2019) ("On its face, this policy is a forfeiture because it explicitly states that any unused vacation pay will be forfeited at the end of the calendar year. . . . [the employer] has confirmed that an employee "can't carry forward" hours past the annual cap and that this constitutes a "use-it-or-lose-it policy.". . . There is no way to interpret this as anything other than an impermissible use-it-or-lose-it policy. *See Molina [v. Lexmark International, Inc.],* 2008 WL 4447678, at *1 n.4 ("A 'use it or lose it' policy is one in which unused vacation or personal days are neither paid at the end of the calendar year nor rolled over to the next year.").

55. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.

56. Defendants willfully failed to pay Plaintiff all compensation due upon termination of employment as required under Labor Code sections 201 and 202. Pursuant to sections 203 and 256 of the Labor Code, Plaintiff is now entitled to recover up to thirty (30) days of wages due to Defendants' willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

<u>EIGHTH CAUSE OF ACTION</u>

Disability Discrimination [Gov. Code §§ 12940(a), 12926.1(c)]

(By Plaintiff Against Employer Defendant and Doe Defendants)

57. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

58. At all relevant times, the FEHA has precluded disability discrimination, which includes, among other things, terminating an employee because of her actual disability or any perceived disability. *See* Cal. Gov. Code § 12940(a) ("It is an unlawful employment practice . . . for an employer, because of the . . . physical disability . . . of any person . . . to discharge the person from employment . . . or to discriminate against the person in compensation or in the terms, conditions, or privileges of employment."), §12926.1(c) ("It is the intent of the Legislature that the definitions of physical and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental disability."); *see also* Cal. Code Regs., tit. 2, § 11065(d)(5).

59. Defendants employed Plaintiff and are covered by the legal requirements of FEHA during all relevant times.

60. During all relevant times of her employment, Plaintiff suffered one or more qualifying physical disability(s) based on her back condition that she sufficiently disclosed to Defendants. Accordingly, Defendants was aware of Plaintiff's disabled status and perceived Plaintiff as disabled.

61. Plaintiff's disability and/or perceived disability was the actual motive or at least a substantial motivating factor (i.e., CACI 2512) in Defendants' decision to terminate Plaintiff.

62. As a direct and proximate result of the discriminatory and illegal conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

63. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers, and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injure, and annoy Plaintiff, such as to constitute oppression, fraud, or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

NINTH CAUSE OF ACTION

Disability Discrimination – Reasonable Accommodation [Gov. Code §§ 12940(m)(1); 12940(a), 12926.1(c)]

(By Plaintiff Against Employer Defendant and Doe Defendants)

64. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

65. At all times herein mentioned, the FEHA has required an employer to provide reasonable accommodation to an employee with a known or perceived disability. *See* Cal. Gov. Code §12940(m).

66. Plaintiff provided notice to Defendants of her disability(s), which gave rise to the employer's duty to provide reasonable accommodation to Plaintiff concerning her disabilities.

67. Defendants failed to provide reasonable accommodation as required by Government Code section 12940(m), including that Defendants summarily terminated Plaintiff's employment as a

result of her disability rather than allow her to attend her medical appointment and then not drive due to her doctor-prescribed medications.

68. The foregoing conduct violates the FEHA, which states that the failure to provide reasonable accommodation to an employee with a known or perceived disability is an unlawful employment practice. *See* Cal. Gov. Code § 12940(m).

69. As a direct and proximate result of the discriminatory and illegal conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

70. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers, and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injure, and annoy Plaintiff, such as to constitute oppression, fraud, or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

TENTH CAUSE OF ACTION

Disability Discrimination – Retaliation [Gov. Code § 12940(m)(2)]

(By Plaintiff Against Employer Defendant and Doe Defendants)

71. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

72. At all relevant times, the FEHA has precluded an employer from taking any adverse employment action against an employee who has engaged in protected conduct, such as requesting accommodation for disability or complaining about disability discrimination.

73. As alleged herein, Defendants retaliated against Plaintiff because Plaintiff was disabled, required medical treatment of her back disability, and required/requested certain reasonable accommodations for her back disability.

74. Defendants engaged in the foregoing illegal conduct in retaliation for Plaintiff's need for medical treatment and reasonable accommodation for her disability.

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75. As a direct and proximate result of the discriminatory and illegal conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

76. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers, and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injure, and annoy Plaintiff, such as to constitute oppression, fraud, or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

ELEVENTH CAUSE OF ACTION

Failure to Prevent Discrimination and Retaliation [Gov. Code § 12940(k)]

(By Plaintiff Against Employer Defendant and Doe Defendants)

77. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

78. At all relevant times, FEHA has required an employer to take reasonable steps to prevent discrimination and retaliation.

79. Defendants employed Plaintiff and are covered by the legal requirements of FEHA during all relevant times.

80. During Plaintiff's employment, Defendants failed to prevent discrimination and retaliation toward Plaintiff on the basis of her actual/perceived disability, in violation of the FEHA, including California Government Code section 12940(k). Defendants failed to take all reasonable steps necessary to prevent discrimination, including failing to comply with DFEH laws and regulations, failing to offer adequate training and education, and failing to take adequate remedial action after becoming aware of the harassment and discrimination.

81. As a direct and proximate result of the discriminatory and illegal conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

82. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers, and directors, and were directed and ratified by Defendants, with a conscious disregard of

Plaintiff's rights and with the intent to vex, injure, and annoy Plaintiff, such as to constitute oppression, fraud, or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

TWELFTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By Plaintiff Against Employer Defendant and Doe Defendants)

83. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

84. California fundamental public policy prohibits discrimination on the basis of a person's actual or perceived disability and/or because she raises questions or complaints about unpaid wages.

85. In taking the actions set forth above, Defendants wrongfully terminated Plaintiff's employment on April 26, 2024: (i) in retaliation for her questions and complaints about her unpaid wages noted herein; and (ii) because she had a back disability that required reasonable accommodation.

86. As a direct and proximate result of Defendants' illegal termination of Plaintiff's employment, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

87. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers, and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud, or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

THIRTEENTH CAUSE OF ACTION

Violation Of The Private Attorneys General Act [Lab. Code § 2698 et seq.]

(By Plaintiff Against All Defendants)

88. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

89. Plaintiff is an "Aggrieved Employee" under PAGA, as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

90. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

91. Plaintiff seeks civil penalties pursuant to PAGA for Defendants' unlawful wage and hour practices, including but not limited to, as stated herein: (i) failing to pay overtime; (ii) failing to pay minimum wages and straight wages; (iii) failing to provide uninterrupted off-duty meal periods and/or required penalties; (iv) failing to provide uninterrupted off-duty rest periods and/or required penalties; (v) failing to pay and/or reimburse employees for costs incurred for business-related functions; (vi) failing to maintain adequate records; (vii) failing to furnish accurate wage statements; and (viii) failing to timely pay all wages due upon termination.

92. Plaintiff seeks PAGA penalties as forth and allowed under Labor Code section 2699(f) and/or other applicable sections.

93. Labor Code violations alleged in this PAGA action include the following:

- California Labor Code § 510 (failure to pay overtime/doubletime);
- California Labor Code §§ 1194, 1194.2, 1197 and 1197.1 (failure to pay minimum wages);
- California Labor Code § 226.7 (unpaid rest break premiums);
- California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums);
- California Labor Code § 227.3 (unpaid vacation and sick wages).
- California Labor Code §§ 226(a) and 226.3 (non-compliant wage statements);
- California Labor Code §§ 201, 202 and 203 (wages not timely paid upon termination);
- California Labor Code § 203 (failure to pay waiting time penalties);
- California Labor Code §§ 204 and 210 (payment of wages);

- California Labor Code § 1198 (standard conditions of labor);
- California Labor Code § 1174, Industrial Wage Orders (failure to maintain records);
- California Labor Code § 558 (failure to comply with requirements regulating hours and days of work);

94. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in their favor as described herein.

95. Pursuant to section 2699(g) of the Labor Code, or other applicable law, Plaintiff is entitled to recover statutory penalties, interest, injunctive relief, costs, and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. Applicable statutory and/or civil penalties pursuant to PAGA;
2. Reasonable attorneys' fees and costs pursuant to California Labor Code section 2699(g) and/or other applicable law;
3. Wages, civil penalties, and applicable statutory penalties;
4. General and compensatory damages;
5. Pre-judgment and post-judgment interest;
6. Attorneys' fees and costs reasonably incurred;
7. Punitive and/or exemplary damages, if allowed;
8. Equitable relief in the nature of declaratory relief, injunctive relief, and/or restitution as applicable;
9. Such other relief that the Court deems proper.

Dated: September 24, 2024

HARDIN LAW GROUP, APC

By: ______________________
James Hardin
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: September 24, 2024

HARDIN LAW GROUP, APC

By:_________________________________
James Hardin
Attorneys for Plaintiff

EXHIBIT 1

Dr. Lori L. Floyd, OD, Inc.
Office Manual

General:

1. Breaks: A one hour lunch break is allowed on weekdays. All non-emergency personal cell phone or internet use is to be conducted during non-business hours. Drinking or being under the influence of alcoholic beverages, cannibis in any form, or any other recreational drug is prohibited during working hours. No smoking is allowed in the office.

2. Salary: Paychecks are available every other Wednesday. Raises are based upon the success of the practice as a whole, and upon competence and contributions to the optometric team. At no time will raises be based upon longevity.

3. Sick Leave: Three days sick leave are allowed for full-time employees (Only applies after 3 months of employment).One day sick leave per year is allowed for part-time employees. (Only applies after 6 months of employment). Any additional sick leave days taken beyond the allowed number, will be taken without pay. Any more than 10 sick days in one year will be cause for review and possible dismissal. Unused sick time is converted to pay at the end of the employment year.

4. Vacations: For part-time employees:

Years employed				
One to four	:	Ave. # of days/week		
Five to ten	:	"	"	x 2
Eleven +	:	"	"	x 3

For full-time employees:

Years employed		
One to four	:	05 days/year = 37 hours
Five to ten	:	10 days/year = 74 hours
Eleven +	:	15 days/year = 111 hours

During the first year of employment, 2 days of non-paid vacation are allowed (after six months of employment). Vacation days are not cumulative – they must be taken every year.

Each employee should plan ahead at the beginning of the year to coordinate vacation time with the doctor and other employees.

5. Notifications:

Two weeks notice is required when an employee chooses to terminate his or her employment.

Employees must give at least six (6) weeks written notice for annual vacations and /or additional requested time off. It is expected that each employee plan ahead at the beginning of the year to coordinate vacation time with the doctor and other employees.

For sick leave, notify the doctor and co-workers that you will be absent.
The doctor will arrange for temporary staff if possible.

6. At Will Employment: The office of Dr. Lori L. Floyd, OD, Inc. may terminate or modify an employment relationship at any time without prior notice or cause. Employment is for no definite period of time, and if an employee is terminated, the office of Dr. Lori L. Floyd,O.D., Inc. is liable only for wages and benefits earned as of the date of termination.

7. Reasons for Dismissal:

Tardiness or absenteeism.
Indiscreet handling of office or patient care matters.
Inability to get along with the staff and doctors.
Lack of team attitude.
Inadequate performance of duties.
Misuse of, theft of, or damage to office property.
Any more than 10 sick days in one year will be cause for review and possible dismissal.

8. Birthdays & Parties: Birthday/Holiday lunches will be provided at the doctor's expense.

9. Funeral and Bereavement: All full time employees are allowed one day for the funeral or bereavement of anyone in the immediate family.

10. Telephone calls:	Staff should avoid making and receiving personal phone calls/texts while on the job. Also, personal conversations between staff members should be discreet and should never interfere with office duties.
11. Hours of Work:	All employees are expected to arrive 10 minutes early to prepare the office for business. Employees are expected to remain in the office until all patients have departed.
12. Paid Holidays:	New Year's Day Memorial Day (Saturday prior to) July 4th Labor Day (Saturday prior to) Thanksgiving Day + 2 Christmas Day + 2 (Employees receive pay only when the holiday falls on his or her normally scheduled work day.) (Applies only after three months of employment.)
13. Appearance:	All employees are expected to project an image of a professional office, and arrive in the office ready for work. Tattoos and body piercings (other than ears) are not to be displayed in the office without the doctor's consent. A uniform/scrubs and nametag are to be worn during all business hours, and will be provided by the office. All employees must be odor neutral during working hours. Body odor, bad breath, cigarette or cigar smoke, or strong perfume smells are not acceptable at any time.
14. Internet:	Any use of office computers or internet service for personal use must be conducted during non-office hours (i.e. prior to or after work, or during lunch break.)
15. Perks:	Any prizes, perks, gift cards, trips, etc. including ophthalmic materials such as frames or contact lenses offered by companies or company representatives are the property of the doctor to be dispersed at her discretion.
16. Keys	Replacement cost for a lost office key is $ 50.00.

EXHIBIT 2

April 23, 2024

Please explain how we get paid for coming in early on Saturdays.

Thanks

Pam Gebhard

Please explain in writing

EXHIBIT 3

STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency
GAVIN NEWSOM, GOVERNOR
KEVIN KISH, DIRECTOR

Civil Rights Department
2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
1-888-519-5917 (voice) | 1-800-884-1684 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

June 5, 2024

RE: **Notice of Filing of Discrimination Complaint**
CRD Matter Number: 202406-24978805
Right to Sue: Gebhard / Floyd et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department

COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)

In the Matter of the Complaint of
Pamela Gebhard — CRD No. 202406-24978805

Complainant,

vs.

Lori Floyd
24000 Alicia Parkway, Suite 11
Mission Viejo, CA 92691

Dr. Lori L. Floyd, O.D., Inc.
24000 Alicia Parkway, Suite 11
Mission Viejo, CA 92691

Respondents

---

1. Respondent **Lori Floyd** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2.Complainant is naming **Dr. Lori L. Floyd, O.D., Inc.** business as Co-Respondent(s).

3. Complainant **Pamela Gebhard**, resides in the City of **,** State of **.**

4. Complainant alleges that on or about **April 26, 2024**, respondent took the following adverse actions:

Complainant was harassed because of complainant's disability (physical, intellectual/developmental, mental health/psychiatric).

Complainant was discriminated against because of complainant's disability (physical, intellectual/developmental, mental health/psychiatric) and as a result of the discrimination was terminated, reprimanded, denied any employment benefit or privilege, denied accommodation for a disability.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation and as a result was terminated, reprimanded, denied any employment benefit or privilege, denied accommodation for a disability.

Additional Complaint Details: Claimant worked as an optometric assistant for DR. LORI L. FLOYD, O.D., INC., which is owned and operated by Dr. Lori Floyd (collectively "Dr. Floyd" or "Employer") for over eight (8) years until she was terminated on or about April 26, 2024.

In late 2023, Claimant notified Dr. Floyd of her back-related disability and her potential need for accommodation. Although Plaintiff shared with Employer the basic information about her back disability, Dr. Floyd made no effort to engage in the interactive process. Rather, Employer retaliated against Claimant based on her need for reasonable accommodations in various ways, including: (i) engaging in a frantic campaign of bogus "write ups" in the March-April, 2024 period to try to "create a record" to terminate Claimant; and (ii) terminating Claimant's employment on April 26, 2024, two days after Claimant requested an accommodation for going to her doctor and receiving medications for her back disability.

In March-April 2024, after Claimant had worked for Employer for nearly eight years (receiving a raise in May 2022 and in increased schedule in March 2023), Employer started secretly putting bogus "write ups" into Claimant's personnel file, purporting to cite supposed performance issues. These bogus "write ups" were never presented to Claimant and they usually involve false or trumped up supposed "performance issues," designed to get rid of Claimant in part because she had recently become disabled and needed certain minimal and reasonable accommodations, such as being allowed to go to doctors' appointments.

On or about Wednesday, April 24, 2024, Claimant went to urgent care because of her back disability. Dr. Floyd's Office Manager (Ms. Perez) told Claimant she "must" return to work by 2:00 p.m. that day or she would be deemed (falsely) to have "abandoned" her job. But Claimant could not return to work that day because she had been given medications that prevented her from driving a motor vehicle safely. On Claimant's next workday, Friday, April 26, 2024, Dr. Floyd peremptorily and angrily fired Claimant, in part because she had a back disability that required reasonable accommodation. Notably, Dr. Floyd's written "Office Manual" evidences some hostility towards illness and potential disability accommodations, stating under the "Sick Leave" and "Reasons for Dismissal" sections that "Any more than 10 sick days in one year will be cause for review and possible dismissal."

Accordingly, Employer and/or its supervisors engaged in, among other things: (1) failure to accommodate disability; (2) failure to engage in the interactive process; (3) disability discrimination; (4) retaliation; and (5) failure to prevent discrimination and retaliation.

VERIFICATION

I, **James Hardin**, am the **Attorney** in the above-entitled complaint. I have read the foregoing complaint and know the contents thereof. The matters alleged are based on information and belief, which I believe to be true.

On June 5, 2024, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Newport Beach, CA

EXHIBIT 4

HARDIN
LAW GROUP

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One Sansome Street, Suite 3500
San Francisco, CA 94104
415.510.2211

June 4, 2024

Via Certified U.S. Mail

California Labor & Workforce
Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(Via Online Submission)

DR. LORI L. FLOYD, O.D., INC.
Attn: Lori L. Floyd
24000 Alicia Parkway, Suite 11
Mission Viejo, CA 92691

Dr. Lori Floyd, Owner
Dr. Lori L. Floyd, O.D., Inc.
24000 Alicia Parkway, Suite 11
Mission Viejo, CA 92691

Re: PAGA Notice Pursuant to California Labor Code § 2699: Pamela Gebhard v. Employer(s) (Dr. Lori L. Floyd, O.D., Inc. and Owner Dr. Lori Floyd)

Dear Sir or Madam:

Please be advised that Pamela Gebhard ("Plaintiff") has retained Hardin Law Group, APC to represent her and other aggrieved employees for wage and hour claims against their current and/or former employer Dr. Lori L. Floyd, O.D., Inc., Dr. Lori Floyd, and/or any other responsible entities or affiliates (collectively "Employer"). This notice is being provided via certified mail to the Employer at their principal place of business and agent for service of process (if any) and is being filed with the California Labor and Workforce Development Agency ("LWDA") via the LWDA's electronic filing system under Section 2699.3(b) of the Labor Code.

The Employer

Employer owns and operates an optometric business in California at 24000 Alicia Parkway, Suite 11, Mission Viejo, CA 92691 ("Location"). Employer hired various non-exempt, hourly employees ("Aggrieved Employees") to perform services at the Location who were subjected to

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the violations alleged herein. Plaintiff is informed and believes that Employer has generally employed more than ten (10) employees working within California during the relevant period.

Employer has violated or caused to be violated several Labor Code provisions and is therefore liable for civil penalties under Labor Code sections 2698-2699.5, *et seq*. Plaintiff respectfully requests that your agency investigate the claims alleged against it herein. This letter will serve as notice of these allegations pursuant to the Private Attorney Generals Act of 2004 ("PAGA"). Cal. Lab. Code § 2699.3.

Factual Background – Plaintiff and Aggrieved Employees

At all relevant times, Plaintiff was an aggrieved employee, as defined in Labor Code section 2699(c) as: "any person who was employed by the alleged violator and against whom one or more violations was committed." Plaintiff seeks recovery for the Labor Code and Wage Order violations set forth herein on behalf of herself and other current and former employees, including but not limited to all similarly situated employees in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and Wage Order violations as Plaintiff.

First, Plaintiff and Aggrieved Employees are owed minimum wages, regular wages, and overtime wages for not being paid for "all time worked" due to Employer's: (i) practice and written policy requiring employees to "arrive 10 minutes early to prepare the office for business" and work off-the-clock per the Employer's Office Manual; and (ii) practice of requiring employees to work through many meal periods, particularly on weekends in which meal periods were not permitted per policy.

Second, Plaintiff and Aggrieved Employees were not "provided" the requisite 10-minute rest periods because Employer did not schedule nor offer 10-minute rest periods. Employer's Office Manual says nothing about rest periods, clearly implying they are not permitted. Employer never paid the requisite one-hour wage penalty for such non-compliant rest periods.

Third, Plaintiff and Aggrieved Employees were not consistently "provided" meal periods because Employer simply did not "provide" the requisite 30-minute meal periods for shifts greater than five hours and on weekends. Employer's Office Manual states that "[a] one hour lunch break is allowed on weekdays," clearly implying that meal periods are not permitted on weekend shifts. Employer never paid the requisite one-hour wage penalty for such non-compliant meal periods.

Fourth, Plaintiff and Aggrieved Employees are owed wages for being deprived of earned vacation wages. As an initial matter, until 2023 Employer's practice had an illegal "use-it-or-lose-it" paid vacation policy which essentially causes the forfeiture of earned wages. *See e.g., Iljas v. Ripley Ent. Inc.*, 403 F. Supp. 3d 793, 801 (N.D. Cal. 2019) ("On its face, this policy is a forfeiture because it explicitly states that any unused vacation pay will be forfeited at the end of the calendar year. . . . [the employer] has confirmed that an employee "can't carry forward" hours past the annual cap and that this constitutes a "use-it-or-lose-it policy.". . . There is no way to interpret this as anything

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other than an impermissible use-it-or-lose-it policy. *See Molina [v. Lexmark International, Inc.*], 2008 WL 4447678, at *1 n.4 ("A 'use it or lose it' policy is one in which unused vacation or personal days are neither paid at the end of the calendar year nor rolled over to the next year.").

Moreover, Employer failed to follow its own policy as stated in the Office Manual in increasing Plaintiff's paid vacation days from 5 days to 10 days per year once Plaintiff's employment reached five years of full-time employment. Accordingly, Plaintiff is owed at least an additional fifteen (15) days of paid vacation, which in turn was not paid out as wages upon her termination on or about April 26, 2024. *See* Cal. Lab. Code § 227.3 ("whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate . . . ."), § 201(a)("If an employer discharges an employee, the wages earned and unpaid at the time of the discharge are due and payable immediately.").

Fifth, Employer violated section Labor Code section 226(a) by willfully failing to furnish Plaintiff and Aggrieved Employees with accurate itemized statements, in that the itemized wage statements provided did not accurately state, among other things, gross wages earned, total hours worked, deductions, net wages earned, hourly rates, the number of hours worked, and hourly rates as applied to hours worked.

Sixth, given Employer's wage and hour violations noted herein, Employer failed to pay all wages due to Plaintiff and Aggrieved Employees upon termination, including but not limited to vested unused vacation time and sick time upon termination.

Thus, at all relevant times, Employer regularly fails to pay and/or provide Plaintiff and all other similarly situated non-exempt hourly employees: (1) earned minimum wages, regular wages, and/or overtime wages due to Employer's improper time rounding practices and timekeeping practices regarding meal periods; (2) compliant off-duty rest periods and/or required premium wages; (3) compliant off-duty meal periods and/or required premium wages; (4) unused vacation time and sick time upon termination; (5) proper and/or accurate wage statements; (6) all wages due upon termination; (7) the required "waiting time" penalties; and (8) adequate recordkeeping as required by Labor Code.

Labor Code Violations

Unlawful Failure to Pay Minimum Wages, Regular Wages, and Overtime Wages

Employer fails to pay Plaintiff and Aggrieved Employees for "all time worked" due to Employer's: (i) practice and written policy requiring employees to "arrive 10 minutes early to prepare the office for business" and work off-the-clock per the Employer's Office Manual; and (ii) practice of requiring employees to work through many meal periods, particularly on weekends in which meal periods were not permitted per policy.

As a result of Employer's practices, Employer has failed to compensate Plaintiff and Aggrieved Employees for hours worked, including overtime work after eight (8) hours in a workday, forty (40) hours in a workweek and/or on the seventh consecutive day of work. As a result of violations of the Labor Code sections 510, 1194, and applicable Wage Orders for failure to pay overtime, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2699 *et seq*.

Similarly, Employer has also failed to compensate Plaintiff and Aggrieved Employees an amount equal to or greater than the minimum wage for all hours worked, as required by Labor Code sections 1182.12, 1194, 1197, 1197.1, and applicable Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. As a result of violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198 and applicable Wage Orders for failure to pay minimum wage, Employer is liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699 *et seq*.

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

Labor Code section 226.7 and Wage Orders require every California employer to authorize and permit all non-exempt employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours, or a major fraction thereon. Under subdivision (a), an employer shall not require an employee to work during rest periods mandated by state law. Subdivision (c) provides that "[i]f an employer fails to provide an employee a rest period in compliance with an applicable statute, wage order, etc. . . the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the rest . . . period is not provided."

Employer has, among other things, failed to: (1) maintain a policy that provides Plaintiff and Aggrieved Employees with off-duty rest periods as required by California law; (2) provide Plaintiff and Aggrieved Employees with a reasonable opportunity to take compliant rest periods at the appropriate times; and (3) failed to pay Plaintiff and Aggrieved Employees an additional hour of pay at their regular rate of pay for each missed or late rest period. Among other things, Plaintiff and Aggrieved Employees were regularly not provided compliant rest periods or required to take untimely, interrupted, or non-duty-free rest periods without receiving an additional hour of pay at their regular rate of for each such rest period.

As a result of Employer's violations of Labor Code sections 226.7, 226.7(b), and 512, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2698 *et seq*.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

Labor Code section 512 and Wage Orders require every California employer to provide all non-exempt employees a duty-free meal period of not less than 30 minutes, for a work period of more than five (5) hours, "except that if the total work period per day is not more than six (6) hours, the meal period may be waived by mutual consent of the employer and employee. An

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employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours work is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived." Under subdivision (a) of Labor Code section 226.7, an employer shall not require an employee to work during meal periods mandated by state law. Subdivision (c) provides that "[i]f an employer fails to provide an employee a meal . . . period in compliance with an applicable statute, wage order, etc. . . . the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal . . . period is not provided."

Employer has, among other things, failed to: (1) maintain a policy that provides Plaintiff and Aggrieved Employees with off-duty meal periods as required by California law; (2) provide Plaintiff and Aggrieved Employees with a reasonable opportunity to take compliant meal periods at the appropriate times; and (3) failed to pay Plaintiff and Aggrieved Employees an additional hour of pay at their regular rate of pay for each missed or late meal period. Among other things, Plaintiff and Aggrieved Employees were regularly not provided compliant meal periods or required to take untimely, interrupted, or non-duty-free meal periods without receiving an additional hour of pay at their regular rate of for each such meal period.

As a result of Employer's violations of Labor Code sections 226.7, 226.7(b), 512, and 1198, Employer is liable for civil penalties pursuant to Labor Code sections 558 and 2698 *et seq*.

<u>Unlawful Failure to Pay Vacation and Sick Time Wages</u>

Employer is required to pay all earned and unused vacation wages and sick time wages upon termination or resignation of an employee. *See* Cal. Lab. Code § 227.3 ("whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate . . . ."), § 201(a)("If an employer discharges an employee, the wages earned and unpaid at the time of the discharge are due and payable immediately.").

Plaintiff and Aggrieved Employees are owed wages for being deprived of earned vacation wages. As an initial matter, until 2023 Employer's practice had an illegal "use-it-or-lose-it" paid vacation policy which essentially causes the forfeiture of earned wages. *See e.g., Iljas v. Ripley Ent. Inc.*, 403 F. Supp. 3d 793, 801 (N.D. Cal. 2019) ("On its face, this policy is a forfeiture because it explicitly states that any unused vacation pay will be forfeited at the end of the calendar year. . . . [the employer] has confirmed that an employee "can't carry forward" hours past the annual cap and that this constitutes a "use-it-or-lose-it policy.". . . There is no way to interpret this as anything other than an impermissible use-it-or-lose-it policy. *See Molina [v. Lexmark International, Inc.],* 2008 WL 4447678, at *1 n.4 ("A 'use it or lose it' policy is one in which unused vacation or personal days are neither paid at the end of the calendar year nor rolled over to the next year.").

Employer failed to follow its own policy as stated in the Office Manual in increasing Plaintiff's paid vacation days from 5 days to 10 days per year once Plaintiff's employment reached

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five years of full-time employment. Accordingly, Plaintiff is owed at least an additional fifteen (15) days of paid vacation, which in turn was not paid out as wages upon her termination on or about April 26, 2024.

Unlawful Failure to Furnish Accurate Wage Statements

Labor Code section 226 requires an employer to provide employees with accurate itemized wage statements showing (1) gross wages earned, (2) total hours worked by an non-exempt employee, (3) piece rates, if applicable, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is being paid, (7) the name of the employee and his or her social security number or identification number, (8) the name and address of the legal entity that is the employer, and (9) all hourly rates in effect and the corresponding number of hours worked. In addition, any payment made in cash must be accompanied by an itemized wage statement that meets the conditions set forth above. Wage Order 5, section 7(B) requires an employer to provide the same information.

Labor Code 226.3 provides that "any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two-hundred and fifty dollars ($250) per employee per violation in an initial citation, and one-thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records in subdivision (a) of section 226. The penalties provided for in this section are in addition to any other penalty provided by law."

Employer has violated Labor Code section 226(a) by willfully failing to furnish Plaintiff and Aggrieved Employees with any itemized statements on many pay periods, and on other pay periods the itemized wage statements provided did not accurately state, among other things, gross wages earned, total hours worked, deductions, net wages earned, hourly rates and number of hours worked, and the legal entity that is the employer. As a result of violations of Labor Code section 226(a), Employers are liable for civil penalties pursuant to Labor Code sections 226.3 and 2698 *et seq*.

Unlawful Failure to Timely Pay Wages Owed Including those Due Upon Termination

Labor Code section 201 provides "if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 provides "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting." Labor Code section 208 requires that all final wages be paid to an employee who is terminated at the place of discharge and to an employee who voluntarily resigns at the place where the employee has been working.

Employer has violated Labor Code sections 201 and 202 by willfully failing to timely pay all compensation due and owing to Plaintiff and all former Aggrieved Employees at the time

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employment was terminated because of, as noted herein, said unpaid vacation/PTO wages, one-hour penalties for missed, interrupted, or untimely meal periods and rest periods, and unreimbursed work-related expenses, among others. Labor Code sections 201 and 227.3 require an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. Labor Code section 202 requires an employer to pay all compensation due and owing to an employee who quits within 72 hours of that employee quitting, unless the employee provides at least 72-hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 workdays.

Pursuant to Labor Code section 1199, "Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars ($100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission. (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission."

Employer willfully failed to pay Aggrieved Employees no longer employed by it all compensation due upon termination of employment as required under Labor Code sections 201 and 202. Pursuant to sections 203 and 256 of the Labor Code, Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days of wages due to Employer's willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. In addition, because Employer violated Labor Code sections 201, 202, and 203, Employer is liable for civil penalties pursuant to Labor Code section 2699 *et seq*.

Unlawful Violation of Labor Code Section 1199

Under Labor Code sections 1199(a) and (c) and 2699.5 *et seq*., an employer who "requires or causes an employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of" the Labor Code regarding employees' wages, hours, and working conditions is subject to PAGA penalties. Employers have violated the Labor Code in various ways set forth herein.

Unlawful Failure to Maintain Adequate Records

Labor Code section 1174 states, in pertinent part, that "[e]very person employee labor in this state shall . . . (c) Keep a record showing the names and addresses of all employees employed . . . [and] (d) Keep, at a central location in the state . . . or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to . . . employees employed at the respective . . . establishments. These records shall be kept . . .

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in a file for not less than three years. . . Likewise, Wage Order 5, section 7 requires that "(A) [e]very employer shall keep accurate information with respect to each employee including the following: (1) the full name, home address, occupation and social security number (2) Birth date . . . (3) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked shall also be recorded . . . (5) Total hours worked in the payroll period and the applicable rates of pay. This information shall be made readily available to the employee upon reasonable request . . . ." In addition, Labor Code section 353 also requires employers to keep accurate records of all gratuities or tips they receive, directly or indirectly, which may not be collected by "managers" or owners under Labor Code section 351. Labor Code section 1174.5 provides that "any person employing labor who willfully fails to maintain the records required under subdivision (c) of section 1174 or accurate or complete records required by subdivision (d) of section 1174 . . . shall be subject to a civil penalty of five hundred dollars ($500). Subdivision (d) of section 1174.5 states that "[a]ny person, or officer or agent thereof, is guilty of a misdemeanor who fails to keep any of the records required by section 1174.

For the reasons and bases noted here, Employer has, among other things, willfully failed to maintain adequate records regarding Plaintiff and Aggrieved Employees.

Conclusion

Based on the above, Employer is in violation of California Labor Code section 2699.5 including but limited to the following[1]:

1. California Labor Code § 510 (failure to pay overtime/doubletime);
2. California Labor Code §§ 1194, 1194.2, 1197 and 1197.1 (failure to pay minimum wages);
3. California Labor Code § 226.7 (unpaid rest break premiums);
4. California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums);

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[1] Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each of the following that are applicable, as is set forth in Labor Code Section 2699.5, which states:

> The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202,203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (I), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

5. California Labor Code § 227.3 (unpaid vacation and sick wages).
6. California Labor Code §§ 226(a) and 226.3 (non-compliant wage statements);
7. California Labor Code §§ 201, 202 and 203 (wages not timely paid upon termination);
8. California Labor Code § 203 (failure to pay waiting time penalties);
9. California Labor Code §§ 204 and 210 (payment of wages);
10. California Labor Code § 1198 (standard conditions of labor);
11. California Labor Code § 1174, Industrial Wage Orders (failure to maintain records);
12. California Labor Code § 558 (failure to comply with requirements regulating hours and days of work);

Plaintiff requests that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provision. Alternatively, Plaintiff requests the agency inform them if it does not intend to investigate these violations so that she may include in their lawsuit the violations discussed in this letter.

Very truly yours,

HARDIN LAW GROUP, APC
A Professional Corporation

James B. Hardin

JBH/br

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 23 Corporate Plaza Dr., Ste. 150, Newport Beach, CA 92660.

On September 24, 2024, I served the foregoing document described as **PLAINTIFF'S FIRST AMENDED COMPLAINT** on the following person(s) in the manner indicated:

SEE ATTACHED SERVICE LIST

☐ (BY MAIL) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Hardin Law Group, APC, Newport Beach, California, following ordinary business practices.

☐ (BY OVERNIGHT FEDERAL EXPRESS) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by Federal Express that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by Federal Express with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by Federal Express at Hardin Law Group, APC, Newport Beach, California, following ordinary business practices.

☐ (BY HAND DELIVERY) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for hand delivery by courier. I caused such document to be delivered by hand to the addresse(s) designated.

☒ (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification address of brice@hardinemploymentlaw.com the document described above and a copy of this declaration to the person and at the electronic notification address set forth herein. The electronic transmission was reported as complete and without error.

☐ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served by email or electronic transmission via USA Legal sent on the date shown below to the email addresses of the persons listed in the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 24, 2024, at Newport Beach, California.

Briana Rice
Briana Rice

SERVICE LIST

James Rumm, Esq. Jennifer J. Ton, Esq. Marina Gil KENNEDY MCCARTHY & RUMM, LLP 20 Pacifica, Suite 460 Irvine, CA 92618 Tel: (949) 889-2341 Fax: (949) 889-2376 Email: jrumm@KMRLawyers.com jton@KMRLawyers.com mgil@kmrlawyers.com service@kmrlawyers.com	Attorneys for Defendants, DR. LORI L. FLOYD, O.D., INC., and DR. LORI L. FLOYD