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Attorneys for Plaintiff Daniela Cabrera,
on behalf of herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

ELECTRONICALLY
FILED
BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KINGS COUNTY
10/08/2024
NOCONA SOBOLESKI, CLERK OF THE COURT
MARILU PONCE, DEPUTY



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

DANIELA CABRERA, on behalf of herself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

MY DIABETES TUTOR, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 24CU0417

**REPRESENTATIVE ACTION COMPLAINT
FOR PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194,
AND 2802 AND PURSUANT TO LABOR CODE
§ 2699(a) FOR VIOLATIONS OF LABOR CODE
§§ 226.3 AND 558**

1 Plaintiff DANIELA CABRERA (“Plaintiff”), on behalf of herself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of MY
3 DIABETES TUTOR, INC., a California corporation, and any subsidiaries or affiliated companies
4 (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to pay all minimum and overtime wages earned during the course of
15 employment, in violation of Labor Code §§ 510, 558, and 1194. Plaintiff and Aggrieved
16 Employees were required to work off-the-clock and without compensation because
17 Defendants did not compensate them for all hours worked—they were required to turn on
18 their computer and login before they were able to clock in (and could take upwards of 10
19 minutes to do so)—none of this time was compensated even though Defendants are required
20 to pay them since an employer is obligated to pay the wages of an hourly employee for all
21 time that the employee is under the control of the employer, and this includes all the time the
22 employee is suffered or permitted to work, whether or not required to do so. When Plaintiff
23 and Aggrieved Employees worked off-the-clock before they were able to actually clock in,
24 they were under the control of Defendants and required to be compensated for all hours
25 worked. These instances deprived Plaintiff and other Aggrieved Employees of significant
26 hours worked and wages due, and constitute violations of Labor Code §§ 510, 558, 1194 and
27 IWC Wage Order 4-2001;
28

1 b. Failing to pay correct premium wages to Plaintiff and Aggrieved Employees
2 who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No.
3 4-2001. Plaintiff and Aggrieved Employees were routinely unable to take a 10-minute rest
4 period for every four (4) hours of work or major fraction thereof but were not paid premium
5 wages of one hour's pay for each missed rest period. They were simply denied and not
6 authorized to take their legally entitled rest periods and were never paid premium wages for
7 missed rest periods. Defendants also maintained an illegal policy and practice requiring
8 Plaintiff and Aggrieved Employees remain on the jobsite premises during their rest periods.
9 This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001;

11 c. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
12 business expenses incurred in direct consequence of the discharge of their duties, in violation
13 of Labor Code § 2802, including, but not limited to, basic office supplies such as notepads,
14 pens, etc. Labor Code § 2802 states that an employer must indemnify its employees for all
15 necessary expenditures or losses incurred by the employee in direct consequence of the
16 discharge of their duties. These instances violate Labor Code § 2802;

17 d. Failing to provide Plaintiff and other Aggrieved Employees with wage
18 statements that fully and accurately itemized the requirements set forth in Labor Code §§
19 226(a) and 226.3. Plaintiff and other Aggrieved Employees are not paid all wages due, as
20 stated above. As such, the wage statements provided by Defendants fail to accurately state all
21 gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked,
22 in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor
23 Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period
24 and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and
25 226.3. Furthermore, and independent of the above allegations, the wage statements issued to
26 Plaintiff and all California employees fail to set forth an address of the employing entity, in
27 violation of Labor Code §§ 226(a)(8) and 226.3—Defendants' address is simply omitted; and
28

1 e. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
2 separation of their employment based on the time frames required by Labor Code §§ 201-202.
3 As stated above, Plaintiff and Aggrieved Employees were not paid all wages due during the
4 course of their employment and, as a result of this failure, they were not timely paid all wages
5 due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged
6 on behalf of Plaintiff and those Aggrieved Employees no longer employed by Defendants.
7

8 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
9 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

10 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
11 The Labor Code violations alleged against Defendants herein arose in Kings County, California.

12 III.

13 PARTIES

14 A. Plaintiff

15 5. Plaintiff DANIELA CABRERA was employed by Defendants from June 2002
16 through July 2024 in Kings County, California.

17 B. Defendant

18 6. Defendant MY DIABETES TUTOR, INC. is a California corporation that employed
19 Plaintiff and Aggrieved Employees in Kings County, California.

20 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
21 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
22 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
23 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
24 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
25 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
26 designated hereinafter as DOES when such identities become known.

27 8. Plaintiff is informed and believes, and based thereon alleges, that each of the
28 Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried

1 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each of the
2 Defendants is legally attributable to the other Defendants.

3 9. The Defendants named herein as DOE 1 through DOE 10 are and are persons acting
4 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
5 provisions of the California Labor Code as alleged herein.

6 **IV.**

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
10 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
11 **LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO**
12 **LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

13 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
14 forth herein.

15 11. As a result of the acts alleged above, including the Labor Code violations set forth in
16 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

17 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
18 civil penalties subject to the following formula:

- 19 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
20 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512,
21 1194, and 2802; and
22 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
23 Code §§ 226.3 and 558.

24 13. Civil penalties recovered will be allocated 75% to the Labor and Workforce
25 Development Agency, and 25% to the affected employees.

26 14. On August 2, 2024, Plaintiff sent a letter, by online submission to the LWDA and by
27 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
28 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor

1 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
2 calendar days of August 2, 2024. Plaintiff may therefore commence this action to seek civil penalties
3 pursuant to Labor Code § 2698 *et seq.*

4 Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as
5 described below.

6 V.

7 **RELIEF REQUESTED**

8 WHEREFORE, Plaintiff prays for the following relief:

9 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
10 Aggrieved Employees;

11 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
12 and other applicable law;

13 3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other
14 applicable law; and

15 4. Such other and further relief as this Court may deem just and proper.

16 Dated: October 8, 2024

Respectfully submitted,

17 GAINES LAW CORPORATION

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19 By: 

20 EVAN S. GAINES
21 Attorneys for Plaintiff
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