

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Jeffrey M. Schwartz, Esq. (SBN 254916)
Alexander J. Aroeste, Esq. (SBN 332653)

LAVI & EBRAHIMIAN, LLP

8889 W. Olympic Boulevard, Suite 200

Beverly Hills, California 90211

Telephone: (310) 432-0000

Facsimile: (310) 432-0001

Email: jlavi@lelawfirm.com

vgranberry@lelawfirm.com

jschwartz@lelawfirm.com

aaroeste@lelawfirm.com

Attorneys for Plaintiff CHARELL D CLEMONS,
on behalf of herself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

CHARELL D CLEMONS, on behalf of herself
and current and former aggrieved employees

Plaintiff,

vs.

INGENESIS, INC.; BAY AREA COMMUNITY
HEALTH; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 24CV452827

PAGA ACTION

**PLAINTIFF CHARELL D
CLEMONS'S COMPLAINT FOR:**

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

COMES NOW Plaintiff CHARELL D CLEMONS ("Plaintiff"), who alleges and complains
on information and belief except as to those allegations relating to plaintiff himself/herself, which
are asserted on personal knowledge, against Defendants INGENESIS, INC.; BAY AREA
COMMUNITY HEALTH; and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

1 (“PAGA”) representative action brought by Plaintiff on behalf of the State of California, HERSELF
2 and other current and former aggrieved employees of Defendants who worked as hourly non-exempt
3 employees in California during the relevant time period seeking civil penalties associated with
4 Defendants’ violation of the Labor Code based on Defendants’ failure to pay wages for all hours
5 worked at the employees’ minimum wage rate or overtime rate, failure to timely pay earned wages
6 during employment, failure to provide complete and accurate wage statements, and failure to timely
7 pay all unpaid wages following separation of employment. Plaintiff seeks on a representative basis,
8 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
9 attorneys’ fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
10 the State of California, and others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 1. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of thirty-five thousand dollars
16 (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to Santa Clara County , including but not limited to, at 9460
20 No Name Uno, Suite 110, Gilroy, CA 95020.

21 **III. PARTIES**

22 2. Plaintiff brings this action as a representative of the Labor and Workforce
23 Development Agency on behalf of HERSELF and other current and former employees subject to
24 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
25 filed include current, former and/or future employees of Defendants who work, worked, or will work
26 for Defendants as direct employees as well as temporary employees employed through temp
27 agencies as hourly non-exempt employees in California. At all times mentioned herein, the currently
28 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by

1 Defendants in an hourly position at Defendants' location in Santa Clara County from approximately
2 March 4, 2022 until on or about August 19, 2024.

3 3. Defendant INGENESIS, INC. is authorized to do business within the State of
4 California and is doing business in the State of California and/or that Defendants DOES 1-33 are,
5 and at all times relevant hereto were persons acting on behalf of Defendant INGENESIS, INC. in
6 the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
7 policies. Defendant INGENESIS, INC. operates in Santa Clara County and employed Plaintiff and
8 aggrieved employees in Santa Clara County, including but not limited to, at 9460 No Name Uno,
9 Suite 110, Gilroy, CA 95020.

10 4. Defendant BAY AREA COMMUNITY HEALTH is authorized to do business
11 within the State of California and is doing business in the State of California and/or that Defendants
12 DOES 34-66 are, and at all times relevant hereto were persons acting on behalf of Defendant BAY
13 AREA COMMUNITY HEALTH in the establishment of, or ratification of, the aforementioned
14 illegal wage and hour practices or policies. Defendant BAY AREA COMMUNITY HEALTH
15 operates in Santa Clara County and employed Plaintiff and aggrieved employees in Santa Clara
16 County, including but not limited to, at 9460 No Name Uno, Suite 110, Gilroy, CA 95020.

17 5. Defendants DOES 1 through 66 are corporations or other business entities or
18 organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California non-
19 exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised control over
20 the wages, hours and working conditions of employment of Plaintiff and aggrieved employees.

21 6. Defendants DOES 67 through 100 are individuals unknown to Plaintiff. Each
22 Defendant is sued individually and in their capacity as an agent, shareholder, owner, representative,
23 manager, supervisor, independent contractor and/or employee of each defendant who violated or
24 caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any
25 provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

26 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said defendants by said fictitious names and will amend this complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Each fictitiously named defendant is in some manner responsible
2 for the events and allegations set forth in this complaint.

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

6 **FIRST CAUSE OF ACTION**

7 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
8 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

9 **(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and**
10 **Other Current and Former Aggrieved Employees)**

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

13 10. During Plaintiff's employment and continuing through the present, Plaintiff alleges
14 Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 510, 1194, 1197, and the
15 applicable Wage Orders.

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

18 12. **Failure to pay wages for all hours worked at the legal minimum wage:**
19 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the employee
22 is suffered and permitted to work. This includes the time an employee spends, either directly or
23 indirectly, performing services which inure to the benefit of the employer.

24 13. Labor Code sections 1194 and 1197 require an employer to compensate employees
25 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
26 Wage Orders.

27 14. In this case, Plaintiff and other current and former aggrieved California-based hourly
28 non-exempt employees worked more minutes per shift than Defendants credited them with having

1 worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved
2 California-based hourly non-exempt employees all wages at the applicable minimum wage for all
3 hours worked due to Defendants' policies, practices, and/or procedures including, but not limited
4 to:

5 (a) Failure to pay Plaintiff and other current and former aggrieved California-based
6 hourly non-exempt employees additional thirty minutes worked on days Defendants required
7 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to
8 attend weekly "Huddle" meetings for one hour for which Plaintiff and other current and former
9 aggrieved California-based hourly non-exempt employees had shortened lunches of thirty minutes
10 instead one hour.

11
12 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
13 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
14 control without paying wages for that time. This resulted in Plaintiff and other current and former
15 aggrieved California-based hourly non-exempt employees working time for which they were not
16 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
17 Wage Order.

18 16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
19 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the employee
22 is suffered and permitted to work. This includes the time an employee spends, either directly or
23 indirectly, performing services that inure to the benefit of the employer.

24 17. Labor Code sections 510 and 1194 require an employer to compensate employees a
25 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40)
26 hours in a workweek, and on any seventh consecutive day of work in a workweek:

27
28 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours
in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in
any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half

(1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Labor Code § 510.

18. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(b) Failure to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees additional thirty minutes worked on days Defendants required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to attend weekly "Huddle" meetings for one hour for which Plaintiff and other current and former aggrieved California-based hourly non-exempt employees had shortened lunches of thirty minutes instead one hour.

19. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510, 1194 and 1198, and the applicable Wage Order.

20. **Failure to timely pay earned wages during employment:** In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code § 204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7)

1 calendar days following the close of the payroll period in which wages were earned. Labor Code §
2 204(d).

3 21. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
4 timely pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
5 employees their earned wages (including minimum wages and/or overtime wages), in violation of
6 Labor Code section 204. Defendants' aforementioned policies, practices, and/or procedures resulted
7 in their failure to pay Plaintiff and other current and former aggrieved California-based hourly non-
8 exempt employees their earned wages within the applicable time frames outlined in Labor Code
9 section 204.

10 22. **Secret payment of lower wages than designated by statute:** Labor Code section
11 223 provides that, where any statute or contract requires an employer to maintain the designated
12 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
13 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including by
14 failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful
15 sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7, 246,
16 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor
17 Code section 1198, Defendants secretly paid a lower wage than designated by statute while
18 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

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

1 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee.”

4 24. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
5 and other current and former aggrieved California-based hourly non-exempt employees all wages
6 earned (including minimum wages, and/or overtime wages) rendered Plaintiff’s and other current
7 and former aggrieved California-based hourly non-exempt employees’ wage statements inaccurate,
8 in violation of Labor Code section 226(a)(1, 2, 5 & 9).

9 25. **Failure to pay employees all wages due at time of termination/resignation:** An
10 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
11 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
12 hours of resignation (Labor Code section 202).

13 26. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
14 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all
15 of their earned wages (including minimum wages, and/or overtime wages), Defendants failed to pay
16 those employees timely after each employee’s termination and/or resignation, in violation of Labor
17 Code sections 201, 202, and 203.

18 27. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
19 section 2699.3. On September 21, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
20 provided notice to Defendants by certified mail which provided notice of the specific provisions of
21 the Labor Code alleged to have been violated, including the facts and theories to support the
22 violations alleged.

23 28. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
24 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
25 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
26 parties notice within 65 days of the date of Plaintiff’s PAGA Claim Notice that the LWDA intends
27 to investigate Plaintiff’s claims.
28

1 29. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
2 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 510,
3 and 1194, During Plaintiff's employment and continuing through the present, preceding Plaintiff
4 sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

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

9 b. For violations of Labor Code section 226(a), alternatively, two hundred fifty
10 dollars (\$250) for each employee for each pay period for the initial violation, and one thousand
11 dollars (\$1,000) for each subsequent violation, for each underpaid employee for each pay period
12 [penalty amounts established by Labor Code section 226.3].

13 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
14 employee for each pay period for the initial violation, and one hundred dollars (\$100) for each
15 subsequent violation, for each underpaid employee for each pay period [penalty amounts established
16 by Labor Code section 558].

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

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

27 30. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
28 reasonable attorneys' fees and costs in connection with his/her claims for civil penalties.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

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

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

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

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

Dated: November 26, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Jeffrey M. Schwartz, Esq.
Alexander J. Aroeste, Esq.
Attorneys for Plaintiff
CHARELL D CLEMONS,
on behalf of herself and others similarly
situated