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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KRISTINE CHAIMUNGKLA, Plaintiff, vs. VISIONS TREATMENT CENTERS, LLC; and DOES 1 to 25, inclusive, Defendants.	CASE NO.: 24STCV31234 **COMPLAINT FOR DAMAGES FOR:** **1) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

COMES NOW Plaintiff, KRISTINE CHAIMUNGKLA (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

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

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant VISIONS TREATMENT CENTERS, LLC is a California limited liability company, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

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

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and

under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

6. Plaintiff started working at VISIONS on or around October 2021. Plaintiff is and was classified as an hourly, non-exempt employee and her latest job title is programmer. Plaintiff's latest rate of pay is $23.00/hour. Plaintiff is still currently employed by VISIONS.

7. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for VISIONS anywhere in the state of California (at all different locations) during the relevant PAGA period.

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

9. VISIONS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because VISIONS had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Moreover, VISIONS failed to provide its employees with proper and accurate reporting time pay. In addition, Plaintiff and others consistently worked "off the clock" in that she would consistently text and email after work hours as there was not enough time during the scheduled shifts to get work done, including the paperwork. Since Plaintiff and others had to consistently supervise and monitor the children,

there was no time for them to complete the required paperwork, even though the company wanted them to try to complete the paperwork during their shifts. VISIONS knew and was aware that employees like Plaintiff were not able to finish their paperwork during shifts and had to work “off the clock” and after work hours, but still failed to compensate Plaintiff and other employees for all hours worked.

10. Due to the above “off the clock” violations and time shaving/rounding mentioned above, VISIONS also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime/double time compensation, even though they worked more than forty (40) hours per week or forty-eight (48) hours per week or over sixteen (16) hours per day and even though they worked seven (7) or more consecutive days. Plaintiff’s and other aggrieved employees’ actual work hours entitled them to overtime compensation, however, VISIONS did not compensate Plaintiff and its hourly, non-exempt employees with the correct amount of overtime due to the “off the clock” work and time shaving as described above. Furthermore, VISIONS failed to include bonuses/incentive payments/shift differentials in calculating Plaintiff’s and other employees’ regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and bonus payments were also not factored into employees’ regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

11. Also, VISIONS violated Labor Code § 226.7 and Industrial Welfare Commission Wage Order no. 5-2001 because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. VISIONS did not pay to Plaintiffs one additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. Plaintiff and others similarly situated were not able to receive their

10-minute rest breaks because they were understaffed and could not leave the children unattended. If there is some argument that Plaintiff and others were relieved of the customary 10-minute rest period due to the nature of their work and per the Industrial Welfare Commission Order, Plaintiff and other similarly situated employees were not able to take a ten-minute rest break while maintaining general supervision of the residents without their rest breaks being interrupted due to the needs of the residents AND the company did not offer them multiple other rest periods to make up for the labor code violations. Although Wage Order No. 5, Section 12(C) allows VISIONS to require employees to remain on the premises and maintain general supervision of residents during rest periods, the law states that "another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents." Based on standards and procedure in place for 24-hour residential facilities that care for children under the age of 18, there must be a maximum 3 to 1 ratio of children to Residential Counselors at all times. Due to the number of staff at VISIONS during any given work shift, Plaintiff and similarly situated aggrieved employees were not able to be relieved of their duties by co-employees. Moreover, Plaintiff and other similarly situated aggrieved employees were not able to take a ten-minute rest break while maintaining general supervision of the residents without their rest breaks being interrupted due to the needs of the residents.

12. VISIONS violated Labor Code §§ 512 and 226.7 and IWC Wage Order 5-2001 because it failed to provide Plaintiffs and other similarly situated aggrieved employees their second requisite 30-minute, uninterrupted meal periods when their shifts were twelve (12) hours or longer, and Plaintiffs did not validly waive said meal periods during their employment tenure. VISIONS did not completely relieve Plaintiffs of all duty during the second meal periods. VISIONS did not pay to Plaintiffs one additional hour of pay at Plaintiffs' regular rate of

compensation for each workday that one or more statutory meal periods was not provided. Furthermore, in terms of their first meal period, Plaintiff and others were not always able to fully eat with residents and/or full meals were not provided to Plaintiff and others. As such, Plaintiff and others suffered meal period violations. Furthermore, Plaintiff and others would have to actually take notes on children during the designated lunch time.

13. Moreover, if Plaintiff signed a first or second meal period waiver, it would not be valid and enforceable. Under California law, employees must make an affirmative decision every day regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of meal periods …whether written or oral, will not be considered valid."). As such, Plaintiff and others did not always receive statutory, timely meal periods during their employment. To the extent that VISIONS argues that employees receive meal break premium pay for missed/late/short meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at VISIONS was not conducive to receiving consistent, timely, statutory meal breaks under California law.

Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

14. Furthermore, during the relevant time period, and due to the above labor code violations, VISIONS failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Plaintiff was not compensated for her “off the clock” work and since Plaintiff did not receive proper meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204. VISIONS was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, VISIONS did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

15. During the relevant time period, VISIONS also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

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

17. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by VISIONS. These costs include but are not limited to, mileage reimbursement for use of personal vehicle as Plaintiff had to use her personal vehicle to drive from home to home but was not compensated for mileage. In addition, there were only 2 shared phones and laptops but 3 employees/counselors per shift and so Plaintiff and others had to use their own personal equipment and cell phones for work purposes and were not compensated enough for it. Accordingly, VISIONS was in violation of California Labor Code sections 2800 and 2802.

18. Furthermore, VISIONS did not provide proper and correct/accurate sick pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 5-2001.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT
Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and IWC Wage Order 5-2001)

(Plaintiff against All Named Defendants and all DOE defendants)

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

20. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated September 4, 2024, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

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

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

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

25. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

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

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

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

29. Specifically, Plaintiff seeks penalties under California Labor Code

section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts alleged in this Complaint.

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

PRAYER FOR RELIEF

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

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: November 26, 2024

MESSRELIAN LAW INC.

By___________________________________
Harout Messrelian, Esq.
Attorneys for Plaintiff Kristine Chaimungkla