

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (272020)
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Electronically FILED by
Superior Court of California,
County of Los Angeles
11/22/2024 3:12 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By A. Villchis-David, Deputy Clerk

Attorneys for Plaintiff Onisha Anthony

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ONISHA ANTHONY,

Plaintiff,

vs.

SAN GABRIEL HEALTHCARE &
WELLNESS CENTRE, LP; and DOES 1 to
25, inclusive,

Defendants.

CASE NO.: **24STCV30941**

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**

COMES NOW Plaintiff, ONISHA ANTHONY (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 SAN GABRIEL HEALTHCARE & WELLNESS CENTRE, LP; and DOES 1 to 25, inclusive (hereinafter collectively “SAN GABRIEL” 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 SAN GABRIEL HEALTHCARE & WELLNESS CENTRE, LP, is a California Limited Partnership, 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

1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent of
4 his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 6. Plaintiff started working at SAN GABRIEL as an CNA on or around 2023. Plaintiff
7 was classified as an hourly, non-exempt employee and her latest rate of pay was approximately
8 \$22.50 per hour.
9

10 7. Plaintiff's employment ended on or around July 2024 when she was forced to quit her
11 employment.

12 8. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff
13 can equivocally bring the following labor code violations on behalf of all other employees,
14 including ALL hourly, non-exempt employees who worked for SAN GABRIEL anywhere in
15 the state of California (at all different facility locations) during the relevant PAGA period.
16

17 9. It is Plaintiff's position that SAN GABRIEL has violated the following Labor Code
18 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
19 non-exempt, hourly employees who worked for SAN GABRIEL at their various facilities in
20 the State of California during the relevant PAGA period.

21 10. SAN GABRIEL violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it
22 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
23 including the statutory minimum wage for all hours worked and for "off the clock" work. This
24 is so because SAN GABRIEL had a company policy wherein they would disproportionately
25 round down the number of hours worked, resulting in "time shaving" and further resulting in
26 aggrieved employees not being paid for all hours worked. Furthermore, and since Plaintiff and
27
28

1 other aggrieved employees worked while “off the clock”, including engaged in charting and
2 other such activities after clocking out for work, the latter was akin to a minimum wage
3 violation. Moreover, SAN GABRIEL failed to provide its employees with proper and accurate
4 reporting time pay.

5 11. Due to the above “off the clock” violations and as a matter of company policy, SAN
6 GABRIEL also violated Labor Code §510 because it failed to pay Plaintiff and aggrieved
7 employees overtime compensation, even though they worked more than 8 hours per day, 12
8 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s and
9 Aggrieved employees’ actual work hours, especially those “off the clock” hours, entitled them
10 to overtime compensation, especially since Plaintiff worked a 3pm to 7am shift, however, SAN
11 GABRIEL did not compensate Plaintiff and its hourly, non-exempt employees with the correct
12 amount of overtime due to the “off the clock” work and time shaving as described above.
13 Furthermore, SAN GABRIEL failed to include bonuses/incentive payments/shift differentials
14 in calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of
15 pay. Additionally, the incentive/shift differential pay and bonus payments were also not
16 factored into employees’ regular rate for purposes of receiving meal and rest break premiums
17 per the Ferra v. Loews case.

18 12. SAN GABRIEL also violated Labor Code § 226.7 and the appropriate Industrial
19 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other
20 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
21 work, or majority portion thereof, throughout their employment. SAN GABRIEL did not
22 completely relieve Plaintiff and others of all duty during said rest periods. SAN GABRIEL did
23 not pay to Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of
24 compensation for each workday that one or more statutory rest periods was not provided. It
25
26
27
28

1 was not part of the company policy for employees such as Plaintiff to take at least two rest
2 breaks per regular shift. Even if Plaintiff and others had a few minutes to spare, which was
3 rare, it certainly would not amount to a 10-minute uninterrupted rest break wherein she and
4 others were relieved of all work duties as the typical shifts were non-stop due to patient needs
5 and patient requests or other nurses needing assistance. On a good day, when the facility was
6 fully staffed, Plaintiff would be responsible for approximately 12 patients, however, on the bad
7 days, which were frequent, Plaintiff would be responsible for 20 to 22 patients. The latter of
8 course did not lend itself to Plaintiff being able to take even a single timely, uninterrupted
9 statutory rest break. As such, the concept of rest breaks was not consistently and properly
10 implemented as a matter of company policy. As such, the culture as well as the policies and
11 procedures of SAN GABRIEL did not lend itself to the employees consistently receiving
12 multiple statutory rest breaks wherein they were relieved of all work duties. The environment
13 at SAN GABRIEL was not conducive to receiving statutory rest breaks under California law
14 and timely, statutory rest breaks were not authorized or enforced.

15
16 13. SAN GABRIEL violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
17 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other hourly,
18 non-exempt employees the requisite 30-minute, uninterrupted meal periods for every five (5)
19 hours of work throughout their employment. SAN GABRIEL did not completely relieve
20 Plaintiff and aggrieved employees of all duty during said meal periods. SAN GABRIEL did
21 not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their
22 regular rate of compensation for each workday that one or more statutory meal periods was not
23 provided. The hourly, non-exempt employees, including Plaintiff, would not always receive
24 meal periods before the 5th hour worked that were actually uninterrupted. The latter was due to
25 the workload, being understaffed, and due to being in a fast-paced medical services
26
27
28

1 environment wherein Plaintiff and others had to tend to patient needs, even if they were on a
2 meal period. Like the rest breaks, receiving a consistent thirty-minute uninterrupted and timely
3 meal break was not consistently part of the company culture and was not enforced by SAN
4 GABRIEL. Consequently, it was the normal practice and custom of SAN GABRIEL not to
5 authorize, permit, and enforce timely statutory meal periods. Moreover, Plaintiff and others
6 also did not receive their second meal periods for shifts greater than 10 hours. Under California
7 law, employees must make an affirmative decision every day regarding whether to waive their
8 meal periods. August 13, 2003 DLSE Opinion Letter (“The decision to forego a meal period
9 may not, therefore, be based on a specific requirement of the employer or on a policy or
10 practice which could reasonably be perceived to be a condition of employment. Therefore,
11 blanket “waivers” of meal periods ...whether written or oral, will not be considered valid.”).
12 As such, any blanket second meal period waivers will not be valid. If SAN GABRIEL had
13 Plaintiff and aggrieved employees sign a meal period waiver, it would not be valid and
14 enforceable since Plaintiff and other employees generally worked more than a 6-hour shift. If
15 SAN GABRIEL had Plaintiff and aggrieved employees sign an on-duty meal period agreement
16 wherein Plaintiff and other employees agreed to work through their meal periods, it would be
17 invalid and unenforceable because the nature of employees’ jobs as nurses, CNA’s and other
18 medical professionals does not and did not prevent them from taking a meal period and the
19 company could have hired “breakers” to relieve them of their job duties so that they can
20 actually take a timely, uninterrupted meal period. Moreover, any such “on duty” meal period
21 agreement did not allow for employees to revoke such an agreement even if it was signed. As
22 such, aggrieved employees did not always receive statutory, timely meal periods during their
23 employment. To the extent that SAN GABRIEL argues that employees receive meal break
24 premium pay for missed/late/short meal periods, that argument is inconsequential for PAGA
25
26
27
28

1 penalty purposes since the PAGA penalties are for the violations themselves, irrespective of
2 whether an employee received the premium payment for a missed, short, or interrupted meal
3 period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give
4 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour
5 of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
6 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
7 committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S.*
8 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
9 and culture at SAN GABRIEL was not conducive to receiving consistent, timely, statutory
10 meal breaks under California law. Moreover, any meal or rest break premiums paid were not
11 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive
12 payments/shift differentials as well as overtime compensation.

14 14. Furthermore, during the relevant time period, and due to the above labor code
15 violations, SAN GABRIEL failed to pay Plaintiff and other similarly situated aggrieved
16 employees all wages due to them within any time period specified by California Labor Code
17 section 204. Since Plaintiff was not compensated for her “off the clock” work and since
18 Plaintiff did not receive proper and complete meal and/or rest break premiums, Plaintiff would
19 still be owed wages pursuant to Labor Code Section 204. SAN GABRIEL was also in violation
20 of California Labor Code section 226(a) by failing to include pertinent information on the
21 wage statements, including but not limited to, the correct hourly rate, all hours worked,
22 overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium
23 pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period,
24 all employee identifying information, the correct and complete name and address of the legal
25 employer, and reimbursement for business expenses, among others. As such, SAN GABRIEL
26
27
28

1 did not provide Plaintiff and other similarly situated aggrieved employees with complete,
2 accurate itemized wage statements.

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

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

11 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
12 necessary, business-related expenses and costs that were not reimbursed by SAN GABRIEL.
13 These costs include, but are not limited to, personal cell phones for work purposes and
14 uniforms, including scrubs and shoes to effectuate job duties. In terms of the personal cell
15 phone use, the DSD “Ryan” would use his cell phone to communicate with Plaintiff and other
16 employees via group texts or chat sessions. Accordingly, SAN GABRIEL was in violation of
17 California Labor Code sections 2800 and 2802.

18 18. Furthermore, SAN GABRIEL did not provide proper and correct/accurate sick pay
19 (inclusive of the correct regular rate) that was also delineated on employee pay stubs and also
20 failed to provide proper sick leave in violation of Labor Code sections 233 and 246.

21
22
23 **FIRST CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
26 **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)

27 **(Plaintiff against All Named Defendants and all DOE defendants)**
28

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

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

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

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

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

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

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

28 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

1 this cause of action and pursue penalties in a representative action for Defendants' violations of
2 the Labor Code.

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

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

9 29. Specifically, Plaintiff seeks penalties under California Labor Code
10 section 2699, for the following:

11 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
12 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
13 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based
14 on the facts alleged in this Complaint.

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

19 **PRAYER FOR RELIEF**

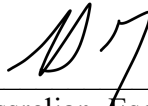
20 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
21 follows:

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

1 5. For such other and further relief as this Court may deem proper.
2

3 DATED: November 22, 2024

MESSRELIAN LAW INC.

4
5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Onisha Anthony
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28