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Superior Court of California
County of Riverside
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J. Hendrickson
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF RIVERSIDE**

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13 LAMONT SOLOMON, as an individual and
on behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 APRIA HEALTHCARE LLC, a Delaware
Corporation; and DOES 1 through 100,

17 Defendants.
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RIC2002553

Case No.: _____

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

UNLIMITED CIVIL CASE

1 Plaintiff Lamont Solomon (hereinafter “Plaintiff”), on behalf of himself and all other
2 aggrieved employees and the State of California, hereby brings this representative action
3 complaint against Apria Healthcare LLC, a Delaware corporation, and DOES 1 to 100, inclusive
4 (collectively, “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself, other aggrieved employees, and the State of
7 California, hereby brings this action for recovery of civil penalties under the California Labor
8 Code Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”) and Industrial
9 Welfare Commission Wage Order 4 (“Wage Order 4”), in addition to seeking declaratory relief
10 and restitution. This Court has jurisdiction over Defendants’ violations of the California Labor
11 Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

12 **VENUE**

13 2. Venue is proper in this judicial district pursuant to California Code of Civil
14 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
15 occurred in San Bernardino County. Defendants own, maintain offices, transact business, have
16 an agent or agents within San Bernardino County, and/or otherwise are found within San
17 Bernardino County, and Defendants are within the jurisdiction of this Court for purposes of
18 service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the one year immediately preceding
22 Plaintiff’s giving of the required notice under the PAGA, and within the statute of limitations
23 periods applicable to each cause of action pled herein, Plaintiff was (and currently is) employed
24 by Defendants as a non-exempt employee, and was and is, a victim of the Labor Code violations
25 complained of herein.

26 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
27 year preceding Plaintiff’s giving of the required notice under the PAGA, Defendants did (and
28 continue to do) business as one of the nation’s leading providers of home respiratory services and

1 certain medical equipment, including oxygen therapy, inhalation therapies, sleep apnea treatment,
2 and negative pressure wound therapy, and employed Plaintiff and other, similarly-situated non-
3 exempt employees within San Bernardino County and State of California and, therefore, were
4 (and are) doing business in San Bernardino County and the State of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this action when such true names and capacities are discovered. Plaintiff is informed, and
9 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
12 employment practices, wrongs, injuries and damages complained of herein.

13 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

15 7. At all times herein mentioned, each of said Defendants participated in the doing
16 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
17 Defendants, and each of them, were the agents, servants, and employees of each and every one of
18 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
19 were acting within the course and scope of said agency and employment. Defendants, and each
20 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
21 omissions complained of herein.

22 8. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and other
26 aggrieved employees.

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9. Plaintiff, a current non-exempt employee, began working for Defendants in approximately 2017, and currently works as a Driver.

10. During Plaintiff's employment, Plaintiff has regularly worked in excess of 8.0 hours per workday and 40.0 hours per workweek, but Plaintiff did not receive overtime compensation equal to one and one-half times his regular rate of pay for all overtime hours worked. Specifically, Defendants require Plaintiff and other non-exempt employee to work on-call for up to an entire week at a time. When Defendants require Plaintiff and other non-exempt employees to work on-call, they are paid a flat rate for every day that they are on-call. For example, for the pay period beginning 7/29/19 and ending 8/11/19, with a pay date of 8/16/19, Plaintiff received a wage statement that included a \$60.00 payment for "Oc1 On Call" representing three days of on-call pay at \$20.00 per day. This on-call pay is paid in addition to non-exempt employees' respective hourly rates of pay. Because these on-call payments are a flat-sum made on a per-day basis, they constitute a piece-rate payment, which must be included in the regular rate of pay for computing overtime. Alternatively, if the on-call payments do not constitute a piece-rate payment, then they constitute a flat-sum bonus, which also must be included in the regular rate of pay. Although Defendants pay additional overtime wages owed on other types of non-discretionary payments such as "Aw1 Driversafe Bonuses," they do not properly calculate overtime wages owed as a result of on-call payments and other forms of non-discretionary pay not excludable from the regular rate of pay (hereinafter referred to collectively as "Incentive Pay"). As a result of Defendants' payment of Incentive Pay to Plaintiff, Defendants miscalculated Plaintiff's regular rate of pay, resulting in a systematic underpayment of overtime wages when Plaintiff worked overtime hours during the same time period for which the Incentive Pay was earned.

11. Due to Defendants' failure to pay Plaintiff all overtime wages, Defendants also maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees. Additionally, Defendants issued facially defective wage statements to Plaintiff and other non-exempt employees when they earned shift-differentials, as the wage

statements list the incorrect rates of pay. For example, for the pay period beginning 7/29/19 and ending 8/11/19, with a pay date of 8/16/19, Plaintiff received a wage statement that included a two different shift differentials, one for an additional 7% on top of his base rate of \$16.32, and the other for an additional 10% on top of his base rate of \$16.32. When Plaintiff worked regular, overtime, or double-time hours while he was earnings any of these shift differentials, Defendants reported the shift differential pay on separate line items on his wage statement. For example, on the wage statement referenced in this paragraph, Plaintiff worked 34.62 regular hours at the 7% shift differential. This means that Plaintiff was earning an additional \$1.1424 per hour, which resulted in him earning an additional \$39.55 for these 34.62 hours. However, instead of listing this correct rate of pay of \$1.1424 on the wage statement for these 34.62 hours, Defendants instead incorrectly list the rate of pay at \$16.3200. This same type of error (i.e., listing the incorrect rate of pay) appears for every single line entry associated with a shift differential. For example, on the wage statement referenced in this paragraph, the following line entries have \$16.32 as the associated rate of pay, which is not correct for any of them: “Sfa Ot Pls 7%”; “Sfa Ot Pls10%”; “Sfw Dt Pls10%”; “Sf1 Rg Pls 7%”; and “Sf2 Rg Pls10%.” Defendants’ failure to list the correct rates of pay all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee violates Labor Code section 226(a)(9). Separate and distinct from the aforementioned issue described above, when Plaintiff and other non-exempt employees earn on-call pay, Defendants do not list the number of piece-rate units earned and any applicable piece rate on the wage statement, in violation of Labor Code section 226(a)(3).

12. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations discussed herein. For purposes of this Complaint, “aggrieved employees” refers to all of Defendants’ non-exempt employees in California from the one year preceding Plaintiff’s providing notice under the PAGA to the LWDA through the present.

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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 13. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
5 fully set forth herein.

6 14. Defendants have committed Labor Code violations against Plaintiff and other
7 aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor Code
8 §§ 2698 *et seq.*, and acting on behalf of himself, other aggrieved employees, and the State of
9 California, brings this representative action against Defendants to recover the civil penalties due
10 to Plaintiff and other aggrieved employees against whom one or more of the violations has been
11 committed, and the State of California according to proof, pursuant to Labor Code § 2699,
12 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
13 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
14 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
15 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
16 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
17 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
18 \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor
19 Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and
20 \$200.00 for each subsequent violation per employee per pay period for those violations of the
21 Labor Code for which no civil penalty is specifically provided pursuant to Labor Code § 2699(f),
22 based on the following Labor Code violations:

- 23 a. Failing to compensate Plaintiff and other aggrieved employees all overtime wages
24 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 25 b. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate,
26 itemized wage statements in violation of Labor Code § 226;
- 27 c. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
28 twice during each calendar month in violation of Labor Code § 204; and

d. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174 and 1198.

15. On March 30, 2020, Plaintiff notified Defendant Apria Healthcare, LLC., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under PAGA with respect to violations of the California Labor Code identified in Paragraph 14 (a)-(d) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations.

16. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

17. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

1 18. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
2 2699(g) and Code of Civil Procedure § 1021.5; and

3 19. For such other and further relief the Court may deem just and proper.
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5 Dated: June 9, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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7 By:



Paul K. Haines
Attorneys for Plaintiff