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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

PATRICIA CUELLAR, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

AVEANNA HEALTHCARE AS, LLC, a
Delaware Limited Liability Company, and
DOES 1 through 100,

Defendants.

Case No.: 56-2021-00556492-CU-OE-VTA

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

REPRESENTATIVE ACTION COMPLAINT

1 Plaintiff Patricia Cuellar (“Plaintiff”) on behalf of herself and all others similarly situated,
2 hereby brings this Representative Action against Defendants Aveanna Healthcare AS, LLC, a
3 Delaware Limited Liability Company, and DOES 1 to 100, inclusive (collectively “Defendants”),
4 and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all similarly aggrieved employees, hereby brings
7 this representative action for recovery civil penalties under California Labor Code § 2698 *et seq.*
8 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
9 amount in controversy exceeds this Court's jurisdictional minimum.

10 **VENUE**

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

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was and currently is, a California resident. During the statute of limitations period,
20 Plaintiff was employed by Defendants as a non-exempt employee.

21 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
22 year preceding the date the California Labor and Workforce Development Agency (“LWDA”)
23 and Defendants were put on notice (and subsequent filing of this matter) and continuing to the
24 present, Defendants did (and continue to do) business within the County of Ventura and the State
25 of California by operating an in-home health care services company, and therefore, were (and are)
26 doing business in the County of Ventura and the State of California.

27 5. Plaintiff does not know the true names or capacities, whether individual, partner,
28 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said

defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Representative Action Complaint when the true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each fictitiously named defendant is and was responsible in some way for the alleged wage and hour violations and other wrongful conduct which subjected Plaintiff and the aggrieved employees, as defined below, to the illegal employment practices, wrongs and injuries complained of herein. All references in this Complaint to "Defendants" shall be deemed to include all DOE Defendants.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved employees (as defined herein).

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

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved employees (as defined herein).

REPRESENTATIVE ACTION ALLEGATIONS

9. Plaintiff has worked for Defendants as a non-exempt nurse since approximately 2018 and has been on leave since December 6, 2020, with the exception of having worked one week in April 2021 on modified duty. Plaintiff provides in-home health care services for children with disabilities.

1 10. During Plaintiff's employment with Defendants, Defendants have failed to
2 authorize and permit Plaintiff and other non-exempt employees to take any required duty-free rest
3 periods. Specifically, when working, Plaintiff was responsible for caring for her patients at all
4 times and was not provided any relief to take duty-free meal and/or rest periods. Upon information
5 and belief, this is corroborated by the fact that Defendants required Plaintiff and other non-exempt
6 employees to sign on-duty meal period agreements which explicitly concede that it was not
7 possible to relieve employees of duty for meal periods. Thus, the nature of Plaintiff's and other
8 non-exempt employees' work required that employees remain on duty at all times during their
9 shift and therefore did not permit for duty-free rest periods. Additionally, despite Defendants'
10 failure to provide Plaintiff with all rest periods to which she was legally entitled due to
11 Defendants' uniform and unlawful policies and/or practices, Defendants never provided Plaintiff
12 with an hour of pay at her regular rate for each rest period violation, as required by Labor Code §
13 226.7.

14 11. Defendants also failed to maintain accurate payroll records and issue accurate
15 wage statements to Plaintiff and other non-exempt employees. Plaintiff and other non-exempt
16 employees are paid on an hourly basis, such that their wage statements should reflect their total
17 hours worked with the corresponding applicable hourly rates, pursuant to Labor Code § 226(a).
18 However, when Defendants paid overtime and double time wages, Defendants issued wage
19 statements to Plaintiff and other non-exempt employees that fail to identify the correct number of
20 total hours worked. For example, when the hours on Plaintiff's wage statements are added up,
21 they do not equal the total hours worked by Plaintiff during the pay period. Further, the overtime
22 rate appears as half of the regular rate of pay rather than 1.5 times the regular rate of pay, and the
23 double time rate appears as the regular rate of pay rather than 2 times the regular rate of pay.
24 Additionally, the wage statements issued by Defendants include other forms of pay, such as
25 "Additional Rate/Hours" and "Details Not Displayed," which fail to list the applicable rate of
26 pay, fail to list the number of hours worked, fail to provide a description of the pay, and/or include
27 a negative number of hours worked. As a result of Defendants' facial wage statement violations
28 and failure to pay all rest period premium wages, Defendants maintained inaccurate payroll

records and issued inaccurate wage statements to Plaintiff and other aggrieved employees.

12. Based on the foregoing, Plaintiff seeks to represent herself and all other aggrieved employees, as defined by Labor Code § 2699(c), which includes all of Defendants' non-exempt employees who worked for Defendants in California from May 18, 2020 through the present.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACTION

(AGAINST ALL DEFENDANTS)

13. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee; (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 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations;

- a. Defendants violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Plaintiff and other aggrieved employees to take all required rest periods, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

- b. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month;
- c. Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements; and
- d. Defendants violated Labor Code §§ 558, 1174, and 1198 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees.

15. On May 18, 2021, Plaintiff notified Defendant Aveanna Healthcare AS, LLC, via certified mail, and the LWDA via e-mail of Defendants’ alleged California Labor Code violations and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to those violations identified herein. Now that sixty-five (65) days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under PAGA with respect to these violations.

16. Plaintiff was compelled to retain the services of counsel to file this court action to protect her 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 she is entitled to receive under California Labor Code § 2699.

PRAYER

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

1. 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 §§ 558 and 2699(a) and (f) 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; (2) \$50.00 for each initial violation and \$100.00 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

1 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
2 subsequent violation per employee per pay period for those violations of the Labor Code for
3 which no civil penalty is specifically provided, based on the violations of Labor Code sections
4 cited hereinabove;

5 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
6 2699(g), and Code of Civil Procedure § 1021.5; and

7 3. For such other and further relief, the Court may deem just and proper.

8
9 Dated: July 23, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

10
11 By:



Fletcher W. Schmidt
Attorneys for Plaintiff