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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

SHEILA VILLANUEVA, as an individual
and on behalf of all others similarly situated,

Plaintiffs,

vs.

AVEANNA HEALTHCARE AS, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: STK-CV-VOE-2020-4469

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE
§ 226(a);
- (2) VIOLATION OF CAL. LABOR
CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

FILED BY FAX

1 Plaintiff Sheila Villanueva (“Plaintiff”) hereby submits this Class and Representative
2 Action Complaint (“Complaint”) against Defendant Aveanna Healthcare AS, LLC (“Defendant”)
3 and Does 1 through 50 (collectively, “Defendants”) on behalf of herself and all other similarly
4 situated current and former employees of Defendants, for penalties and/or damages for failure to
5 provide complete and accurate itemized wage statements in violation of the California Labor
6 Code as follows:

7 **INTRODUCTION**

8 1. This class and representative action is within the Court’s jurisdiction under
9 California Labor Code §§ 226 and 2698, *et seq.*

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to provide complete and accurate itemized
15 wage statements to Plaintiff and Class Members.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 have engaged in, among other things a system of willful violations of the California Labor Code
18 by creating and maintaining policies, practices, and customs that knowingly deny its employees
19 the above stated rights and benefits.

20 5. The policies, practices and customs of defendants described above and below
21 have resulted in unjust enrichment of Defendants and an unfair business advantage over
22 businesses that routinely adhere to the strictures of the California Labor Code.

23 **JURISDICTION AND VENUE**

24 6. The Court has jurisdiction over the violations of California Labor Code §§ 226
25 and 2698, *et seq.*

26 7. Venue is proper because Defendants do business in San Joaquin County and
27 Plaintiff works for Defendants in Stockton, California.

PARTIES

8. Plaintiff has been employed by Defendants as a non-exempt employee since about 2013.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code §§ 226 and 2698, *et seq.*

10. Plaintiff is informed and believes, and based thereon alleges, that Aveanna Healthcare AS, LLC was and is a Delaware limited liability company that provides home healthcare services. Plaintiff is informed and believes, and based thereon alleges, that Defendant operates and maintains business locations and facilities across the State of California, including facilities Stockton, California.

11. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

13. 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 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were

1 acting within the course and scope of said agency and employment.

2 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
4 joint venturer of, or working in concert with each of the other co-Defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity.
6 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
7 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

9 15. At all times herein mentioned, Defendants, and each of them, were members of,
10 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
11 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 16. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
15 herein mentioned, Defendants, and each of them, ratified each and every act or omission
16 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
17 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
18 damages as herein alleged.

19 CLASS ACTION ALLEGATIONS

20 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
21 California Code of Civil Procedure § 382. Plaintiff proposes the following Class:

- 22 a. All current and former California non-exempt hourly employees of Defendants
23 who were paid overtime or doubletime wages at any time between April 6, 2019,
24 through the present (the “OT Wage Statement Class”); and
25 b. All current and former California non-exempt, hourly employees of Defendants
26 who were paid “Additional Rate/Hours” wages, at any time between April 6,
27 2019, through the present (the “Additional Rate/Hours Wage Statement Total
28 Hours Class”).

1 18. Plaintiff further reserves the right to amend such Class definition based upon
2 further discovery.

3 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
4 that joinder of all members would be impractical, if not impossible. The identities of the
5 members of the Class are readily ascertainable by review of Defendants' records, including
6 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 failed to provide accurate itemized wage statements to its employees in violation of Labor Code
8 § 226(a).

9 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
10 necessary steps to represent fairly and adequately the interests of the Class defined above.
11 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
12 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
13 actions in the past and currently have a number of wage-and-hour class actions pending in
14 California state and federal courts.

15 21. Defendants uniformly administered a corporate policy and practice of failing to
16 provide accurate itemized wage statements in violation of Labor Code § 226(a). Plaintiff is
17 informed and believes, and based thereon alleges, that this corporate conduct is accomplished
18 with advance knowledge, intent, and willfulness.

19 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
20 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
21 Labor Code § 226(a).

22 23. **Common Question of Law and Fact:** There are predominant common questions
23 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
24 concerning Defendants' policy and practice of failing to provide accurate itemized wage
25 statements in violation of Labor Code § 226(a).

26 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
27 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
28 as the Class Members. As with other non-exempt California employees, Plaintiff was not

provided proper and accurate itemized wage statements. Specifically, whenever overtime and double time wages were paid, the wage statements failed to identify the overtime rate as 1.5 times the regular rate of pay and double time rate and 2 times the regular rate of pay in violation of Labor Code § 226(a)(9). Rather, the overtime rates appeared as half of the regular rate of pay and double time rates appeared as the regular rate of pay. The wage statements also failed to identify the accurate total hours worked whenever overtime and double time wages were paid. More specifically, when the hours shown on the wage statements are added up, they do not appear to add up to the actual total hours worked in violation of Labor Code § 226(a)(2). In addition, whenever “Additional Rate/Hours” wages were paid, the wage statements failed to identify any applicable hourly rates of pay and hours used to compute such wages in violation of Labor Code § 226(a)(9). Therefore, Plaintiff is a member of the Class and have suffered the alleged violations of California Labor Code § 226(a).

25. The California Labor Code upon which Plaintiff bases these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

26. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

1 27. The prosecution of separate actions by the individual Class Members, even if
2 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
3 to individual Class Members against the Defendants and which would establish potentially
4 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
5 individual Class Members which would, as a practical matter, be dispositive of the interest of the
6 other Class Members not parties to the adjudications or which would substantially impair or
7 impede the ability of the Class Members to protect their interests. Further, the claims of the
8 individual Class Members are not sufficiently large to warrant vigorous individual prosecution
9 considering all of the concomitant costs and expenses.

10 28. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
13 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
14 § 226 and Code of Civil Procedure § 1021.5.

15 29. Proof of a common business practice or factual pattern, which the named Plaintiff
16 experienced and is a representative of, will establish the right of each of the members of the
17 Plaintiff Class to recovery on the causes of action alleged herein.

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 226(a)**

20 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

21 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
22 though fully set forth herein.

23 31. Defendants failed in their affirmative obligation to provide accurate itemized
24 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
25 in violation of Labor Code § 226.

26 32. Plaintiff and the Class were paid on an hourly basis. As such, the wage
27 statements should have reflected the total hours worked, and all applicable hourly rates and
28 corresponding number of hours worked, pursuant to Labor Code § 226(a). The wage statements

provided to Plaintiff and the Class failed to identify such information. More specifically, when overtime and double time wages were paid, the wage statements failed to identify the correct total hours worked. When the hours shown on the wage statements were added up, they do not equal the actual total hours worked during the pay period in violation of Labor Code § 226(a)(2). Further, the overtime rate appears as half the regular rate of pay rather than 1.5 times the regular rate of pay, and the double time rate appears as the regular rate of pay rather than 2 times the regular rate of pay, in violation of Labor Code § 226(a)(9). Moreover, when “Additional Rate/Hours” wages were paid, the wage statements failed to identify the applicable rates of pay and number of hours worked in violation of Labor Code § 226(a)(9).

33. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys’ fees, and costs of suit according to the mandate of California Labor Code § 226.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

35. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from May 26, 2019, through the present, for Defendants’ violation of Labor Code § 226(a) arising from Defendants’ failure to provide proper and accurate itemized wage statements.

36. More specifically, when overtime and double time wages are paid, the wage statements fail to identify the total hours worked and correct rates of pay. When the hours shown on the wage statements are added up, they do not equal the actual total hours worked during the pay period. Further, the overtime rate appears as half the regular rate of pay rather than 1.5 times the regular rate of pay, and the double time rate appears as the regular rate of pay rather than 2

1 times the regular rate of pay. Additionally, when “Additional Rate/Hours” wages are paid, the
2 wage statements fail to identify the applicable rates of pay and number of hours worked.
3 Therefore, Defendants violated Labor Code section 226(a) by not providing the requisite
4 itemized wage statement to Plaintiff and Aggrieved Employees.

5 37. Plaintiff is an “aggrieved employee” pursuant to Labor Code § 2699, as Plaintiff
6 has suffered the violations of Labor Code § 226(a) alleged above.

7 38. On or about May 26, 2020, Plaintiff sent written notice to the California Labor &
8 Workforce Development Agency (“LWDA”) of Defendants’ violation of Labor Code § 226(a),
9 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”).

10 39. As of the date of the filing of this Complaint, the LWDA has not responded to
11 Plaintiff’s written notice nor indicated whether it intends to investigate the Labor Code violations
12 provided for in the written notice. Pursuant to Labor Code § 2699.3, Plaintiff also sent written
13 notice of Defendants’ violations of the Labor Code to Defendants via certified mail.

14 40. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
15 applicable civil penalties for Defendants’ violations of Labor Code § 226(a) for the time period
16 described above, on behalf of herself and other Aggrieved Employees.

17 **PRAYER FOR RELIEF**

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

- 20 1. For an order certifying the proposed Class;
- 21 2. For an order appointing Plaintiff as the representative of the Class;
- 22 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 23 4. Upon the First Cause of Action, for penalties and/or damages pursuant to
24 California Labor Code § 226, *et seq.*, and for interest, costs and attorneys’ fees;
- 25 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
26 to the PAGA, Labor Code § 2698, *et seq.*, Labor Code § 226.3, and for costs and attorneys’ fees;
- 27 6. On all causes of action for attorneys’ fees and costs as provided by California
28 Labor Code §§ 226, and 2699, and Code of Civil Procedure § 1021.5; and

1 7. For such other and further relief that the Court may deem just and proper.
2

3 DATED: June 1, 2020

DIVERSITY LAW GROUP, P.C.

4 By: 
5 _____

Larry W. Lee

Max W. Gavron

6 Attorneys for Plaintiff, the Class, and Aggrieved
7 Employees
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