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FILED
Superior Court Of California,
Sacramento
06/27/2013
cleurgans
By _____, Deputy
Case Number:
34-2013-00147371

8 Attorneys for Plaintiff SUZANNE M. RYAN,
9 individually and on behalf of others similarly situated

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO

12 SUZANNE M. RYAN, individually and on
13 behalf of herself and others similarly situated,

14 Plaintiff,

16 vs.

18 DIGNITY HEALTH, a California corporation,
19 and DOES 1 through 100, inclusive,

20 Defendants.

CASE NO.:

CLASS ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF

- 1. Failure to Properly Calculate Meal & Rest
Period Premium Payments (Labor Code
§226.7)
- 2. Failure to Timely Pay Wages to Terminated
Employees (Labor Code §§201- 203)
- 3. Violation of Unfair Competition Law
(Business & Professions Code §17200, et seq.)

DEMAND FOR JURY TRIAL

28

1 Plaintiff SUZANNE M. RYAN (“Plaintiff”), individually and on behalf of herself and
2 others similarly situated, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant DIGNITY HEALTH and DOES
5 1 through 100 (“Defendants” or “DIGNITY HEALTH”) to recover underpaid meal and rest period
6 premium payments due to Defendants’ failure to properly calculate the regular rate of
7 compensation for purposes of premium payments. Plaintiff also seeks penalties for Defendants’
8 failure to pay all wages due to all terminated or resigned employees.

9 **JURISDICTION AND VENUE**

10 2. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
11 Civil Procedure, section 395. Defendant DIGNITY HEALTH is a California corporation with its
12 principal place of business in San Francisco, California. Defendants employ hourly Registered
13 Nurses to work in their hospitals and conduct business in Sacramento County, and each Defendant
14 is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged
15 herein have a direct effect on Plaintiff and those similarly situated within the State of California
16 and within Sacramento County. Defendants employ numerous Class Members in Sacramento
17 County. There is no federal question at issue as the issues herein are based solely on California
18 statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Civil
19 Code, and Business and Professions Code.

20 3. Further, Business and Professions Code, section 17203 provides that any person
21 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
22 Business and Professions Code, section 17204 provides that any person acting on his or her own
23 behalf may bring an action in a court of competent jurisdiction. Thus, the above entitled court
24 maintains appropriate jurisdiction to hear this matter.

25 **PARTIES**

26 4. Plaintiff SUZANNE M. RYAN is a resident of the State of California. Plaintiff
27 SUZANNE M. RYAN was employed by Defendants in the State of California as an hourly
28 Registered Nurse. Defendants failed to properly calculate the regular rate of pay when making

1 meal and rest period premium payments and failed to timely pay wages at separation from
2 employment.

3 5. Defendant DIGNITY HEALTH is a California corporation and operates within
4 California. DIGNITY HEALTH employs numerous Class Members in Sacramento County at
5 hospitals operated by DIGNITY HEALTH. At each of its hospitals, DIGNITY HEALTH employs
6 hourly Registered Nurse employees.

7 6. Plaintiff is unaware of the true names, capacities, relationships, and extent of
8 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 100, but is
9 informed and believes and thereon alleges that said Defendants are legally responsible for the
10 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
11 Plaintiff will amend this complaint when their true names and capabilities are ascertained.

12 7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
13 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
14 class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed
15 and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as
16 the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
17 pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

18 **GENERAL ALLEGATIONS**

19 8. During all, or a portion, of the Class Period, Plaintiff and each member of the
20 Plaintiff Class were employed by Defendants and each of them, in the State of California.

21 9. Plaintiff and each Plaintiff Class member were non-exempt employees covered
22 under one or more Industrial Welfare Commission (IWC) Wage Orders, including 5-2001 ("Wage
23 Orders") and the California Labor Code, regulations and statutes, and each Plaintiff Class member
24 was not subject to an exemption for executive, administrative, professional employees, or any
25 other exemption, which imposed an obligation on the part of the Defendants to pay Plaintiff and
26 Plaintiff Class members lawful premium payments of one hour at the regular rate of pay for
27 unprovided meal and rest periods.

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1 follows:

2 All members of the Plaintiff class who, within three years of the filing of the
3 Complaint, were subject to a company practice of failing to timely pay wages upon
separation from employment (“Waiting Time Penalty Subclass”).

4 16. Further, Plaintiff brings this action on behalf of herself and all other similarly
5 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
6 follows:

7 All California Class members subject to Defendants’ policies and/or practices of
8 failing to properly calculate the regular rate of pay for purposes of making meal or
9 rest period premium payments who are thereby owed restitution under the
California Unfair Competition Law (“Unfair Competition Law Subclass”).

10 17. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
11 applicable law to amend or modify the class definition with respect to issues or in any other ways.
12 Plaintiff is the Named Representative and is a member of the Plaintiff Class. Plaintiff seeks class-
13 wide recovery based on the allegations set forth in this complaint.

14 18. This action has been brought any may be maintained as a class action pursuant to
15 Code of Civil Procedure, section 382 because there is a well-defined community of interest in the
16 litigation and the proposed Class is easily ascertainable through the records Defendants are
17 required to keep.

18 19. Numerosity. The members of the Class are so numerous that individual joinder of
19 all of them as Plaintiff is impracticable. While the exact number of the Class members is
20 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there
21 are thousands of Class members.

22 20. Commonality. Common questions of law and fact exist as to all Class members
23 and predominate over any questions that affect only individual members of the Class. These
24 common questions include, but are not limited to:

- 25 a. Did Defendants violate Labor Code section 226.7 by improperly calculating
26 the regular rate of pay for purposes of making meal or rest period premium
27 payments?
- 28 b. Did Defendants violate Labor Code sections 201 and/or 202 by not paying

1 Class Members who are no longer employed by Defendants all earned
2 wages, including proper meal or rest period premium payments which take
3 into consideration all forms of payment for hours worked, upon their
4 separation from employment? If so, were such violations “willful” within
5 the meaning of Labor Code section 203?

6 c. Did Defendants violate the Unfair Competition Law, Business &
7 Professions Code, section 17200, et seq., by engaging in the conduct alleged
8 in this complaint?

9 d. What are the effects and the extent of any injuries sustained by the Plaintiff
10 Class and Plaintiff Sub-Class members and appropriate type and/or measure
11 of damages?

12 e. What is the amount of restitution owed by the Defendants attributable to
13 their violation of the Unfair Competition Law by failing to properly
14 calculate regular rate of pay for purposes of meal period premium payments
15 and other wage violations?

16 f. What is the appropriateness and nature of relief to each Plaintiff Class and
17 Sub-Class member?

18 g. What is the extent of liability of each Defendant, including DOE
19 defendants, to each Plaintiff Class and Sub-Class member?

20 21. Typicality. Plaintiff’s claims are typical of the claims of the other members of the
21 Class. Plaintiff and other members of the Class were subject to the same policy and practice of
22 failing to properly calculate the regular rate of pay for meal and rest period premium payments.
23 Defendants failed to pay all wages owed to Plaintiff and Plaintiff Class members upon separation
24 of employment.

25 22. Adequacy. Plaintiff will adequately and fairly protect the interests of the members
26 of the Class. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is
27 represented by attorneys who have substantial class action experience in wage-and-hour and class
28 action law.

1 pay for purposes of meal or rest period premium payments, rather her standard hourly rate was
2 used for the premium payment.

3 28. By failing to properly calculate the regular rate of compensation for meal period
4 premium payments, Defendants have underpaid the Plaintiff and Plaintiff Class members for meal
5 period premium payments.

6 29. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
7 represent have been deprived of meal and/or rest period premium payments and/or other
8 compensation in amounts to be determined at trial, and are entitled to recovery of such amounts,
9 plus interest thereon.

10 30. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
11 described below.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PAY WAGES TO TERMINATED OR RESIGNED EMPLOYEES**
14 **(Labor Code §203)**
(Plaintiff and Plaintiff Class against each Defendant)

15 31. Plaintiff incorporates the preceding paragraphs.

16 32. Labor Code sections 201 and 202 require Defendants to pay employees all wages
17 no later than 72 hours after resignation from employment, or immediately in the case of discharge
18 by the employer. Labor Code section 203 provides that if an employer willfully fails to timely pay
19 such wages, then the employer must, as a penalty, continue to pay the subject employees' wages
20 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30
21 days of wages.

22 33. As alleged above, Plaintiff and the Class she seeks to represent are entitled to
23 compensation for regular pay and overtime pay, but to date have not received such compensation.

24 34. More than 30 days have passed since Plaintiff and certain members of the Plaintiff
25 Class have left Defendants' employ.

26 35. As a consequence of Defendants' willful conduct in not paying wages owed,
27 certain members of the Plaintiff Class are entitled to 30 days' wages as a penalty under Labor
28 Code section 203 for failure to pay legal wages, together with interest thereon and attorneys' fees

1 and costs.

2 36. WHEREFORE, Plaintiff and the members of the Plaintiff Class request relief as
3 described below.

4 **THIRD CAUSE OF ACTION**
5 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
6 **(Business & Professions Code §§17200, et seq.)**
7 **(Plaintiff and Plaintiff Class against each Defendant)**

7 37. Plaintiff incorporates the preceding paragraphs.

8 38. The unlawful conduct of Defendants alleged herein constitutes unfair competition
9 within the meaning of Business & Professions Code, section 17200, et seq. Due to their unlawful
10 and unfair business practices in violation of the Labor Code Defendants have gained a competitive
11 advantage over other comparable companies doing business in the State of California that comply
12 with their obligations to properly pay employees for all earned wages as required by law.

13 39. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other
14 members of the Class have suffered injury in fact and lost money or property. Plaintiff and other
15 members of the Class have been deprived of their rights to wages due as alleged herein.

16 40. Pursuant to Business & Professions Code, section 17203, Plaintiff and other
17 members of the Class are entitled to restitution of all wages and other moneys owed and belonging
18 to them, including interest thereon that Defendants wrongfully withheld from them and retained
19 for themselves by means of their unlawful and unfair business practices.

20 41. Pursuant to Business & Professions Code, section 17203, Plaintiff and other
21 members of the Class are entitled to injunctive relief to prevent the continuance of Defendants'
22 unlawful and unfair business practices.

23 42. Plaintiff and other members of the Class are entitled to recover reasonable
24 attorneys' fees pursuant to Code of Civil Procedure, section 1021.5, the substantial benefit
25 doctrine, and/or the common fund doctrine.


26 **PRAYER**

27 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
28 relief and judgment against Defendants, jointly and severally, as follows:

- 1 A. For certification of this action as a class action;
- 2 B. For appointment of Plaintiff as the representative of the Class;
- 3 C. For appointment of counsel for Plaintiff as Class Counsel;
- 4 D. For meal and rest period premium payments using the appropriate regular rate of
- 5 compensation;
- 6 E. For penalties under Labor Code section 203;
- 7 F. For prejudgment interest;
- 8 G. For reasonable attorneys' fees and costs of suit pursuant to Labor Code section
- 9 1021.5;
- 10 H. For injunctive relief; and
- 11 I. For such other relief the Court deems just and proper.

12 Dated: June 24, 2013

COHELAN KHOURY & SINGER

13
14 By: 
15 Michael D. Singer
16 Kimberly D. Neilson

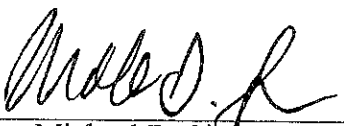
17 Attorneys for Plaintiff SUZANNE M.
18 RYAN, individually and on behalf of others
19 similarly situated

20 **DEMAND FOR JURY TRIAL**

Plaintiff demands jury trial for all claims so triable.

21 Dated: June 24, 2013

COHELAN KHOURY & SINGER

22
23 By: 
24 Michael D. Singer
25 Kimberly D. Neilson

26 Attorneys for Plaintiff SUZANNE M.
27 RYAN, individually and on behalf of others
28 similarly situated