

**ENDORSED
FILED
ALAMEDA COUNTY**

OCT 16 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xi Bowie

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7 *behalf of herself and all other similarly situated*

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 DIANA MURPHY on behalf of herself and all others
13 similarly situated,

14 Plaintiff,

15 vs.

16 CARE 1ST HEALTH PLAN and Does 1 through 50,
17 inclusive,

17 Defendants.

No. RG15784123

**AMENDED CLASS ACTION
COMPLAINT**

Unlimited Civil Case

The Amount Demanded Exceeds \$10,000

19 Plaintiff Diana Murphy ("Plaintiff"), by her attorneys, brings this action on behalf of
20 herself and all other similarly situated, aggrieved employees and the general public, and on
21 information and belief, except those allegations that pertain to the named Plaintiff and her
22 attorneys (which are alleged on personal knowledge), hereby alleges as follows:

23 1. This action alleges Defendant Care 1st Health Plan ("Defendant"): (1) failed to
24 timely pay employees commissions owed in violation of California Labor Code section 204; (2)
25 failed to maintain, provide and furnish accurate wage statements to employees as required by
26 California Labor Code sections 226, 1174; and (3) failed to reimburse Plaintiff and those similarly
27 situated for work-related expenses incurred in the discharge of their duties in violation of
28 California Labor Code section 2802 and applicable Industrial Welfare Commission Orders. Said

1 conduct, in addition to the forgoing, violated each Labor Code section 1198 and the Labor Code
2 sections as set forth in California Labor Code section 2699.5.

3 2. This action seeks relief for unremedied violations of California law, including, inter
4 alia; damages, and/or restitution, as appropriate, to members of the Class, aggrieved employees, and
5 to victims of the practices at issue, who have not timely received all wages due, who have not been
6 adequately reimbursed for expenses incurred in performing their work duties, and who have failed
7 to receive accurate wage statements. Plaintiff is informed and believes that the damages, back
8 wages, expense reimbursements, restitution, penalties, interest and attorneys' fees do not exceed an
9 aggregate of \$4,999,999.99 and that the pro-rata value of Plaintiff's individual claims, including
10 damages, back wages, expense reimbursements, restitution, interest, attorneys' fees, and penalties,
11 does not exceed \$74,999.99.

12 3. Plaintiff is an adequate and proper class representative. Plaintiff brings this action
13 in her individual capacity, on behalf of all others similarly situated, as an aggrieved employee, and
14 pursuant to California Business & Professions Code section 17204, on behalf of the general
15 public. Defendant employed Plaintiff as a sales representative in California within four years of
16 the filing of this complaint. While employed as a sales representative by Defendant, Plaintiff was
17 required to use her personal vehicle in the execution of her work duties, without adequate
18 reimbursement for the expenses incurred in doing so, was required to maintain internet service at
19 home without reimbursement in order to comply with her work duties, was not paid earned
20 commissions in a timely manner as required by California law, and did not receive accurate wage
21 statements in compliance with California law. Among other things, the wage statements did not
22 list all hours worked as required by Labor Code section 226(a)(2). As a result of these practices,
23 Defendant failed to adequately reimburse Plaintiff and all other similarly situated for expenses
24 incurred in the performance of their job duties, and failed to timely pay all wages due. In addition
25 to the foregoing, Defendant failed to provide and furnish Plaintiff and all others similarly situated
26 with accurate statements of wages.

27 4. Defendant is, and at all relevant times was, doing business in the State of
28 California and is an employer under applicable Industrial Welfare Commission Orders.

1 5. The names and capacities of defendants sued herein under California Code of Civil
2 Procedure section 474 as Does 1 through 50, inclusive, are presently not known to Plaintiff, who
3 therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this
4 Complaint and include these Doe defendants' names and capacities when they are ascertained.
5 Each of the fictitiously named defendants is responsible in some manner for the conduct alleged
6 herein and for the injuries suffered by Plaintiff, the members of the proposed class and the general
7 public.

8 6. At all times mentioned in the causes of action alleged herein, each and every
9 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
10 alleged in the causes of action stated herein, each and every Defendant was acting within the
11 course and scope of this agency or employment and was acting with the consent, permission and
12 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the
13 causes of action stated herein were ratified and approved by every other Defendant or their
14 officers or managing agents.

15 7. This action seeks relief on behalf of the two subclasses of persons:

- 16 a. All sales representatives in the employ of Defendant in California within
17 four years preceding the filing of the action to the present; and,
18 b. All employees of Defendant in California within four years preceding the
19 filing of the action to the present whose compensation was not solely based
20 on a salary and whose wage statements did not reflect hours worked.

21 8. The subclasses are sufficiently numerous, consisting of more than 50 individuals
22 but fewer than 100, geographically dispersed throughout California, such that the joinder of all
23 proposed class members in one action is impracticable, and the disposition of whose claims in a
24 class action will provide substantial benefits to both the parties and the Court.

25 9. There is a well-defined community of interest in the questions of law and fact
26 involved affecting the parties to be represented. The questions of law and fact common to the
27 proposed class predominate over questions that may affect individual class members, including
28 but not limited to the following:

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- a. Whether Defendant implemented and engaged in a systematic practice whereby it unlawfully failed to timely pay all wages to employees;
- b. Whether Defendant implemented and engaged in a systematic practice whereby it unlawfully failed to reimburse employees for work-related expenses incurred in the discharge of their duties;
- c. Whether Defendant implemented and engaged in a systematic practice whereby it failed to provide accurate wage statements to employees; and,
- d. Whether the systematic acts and practices of Defendant as alleged herein violated, inter alia, applicable provisions of the California Labor Code, including but not limited to sections 204, 226, 226.3, 1198, 2699 and 2802, applicable Industrial Welfare Commission Orders, and California Business & Professions Code section 17200, et seq.

10. Because Plaintiff earned commissions on a regular basis for which she was not timely compensated, was not reimbursed for work-related expenses incurred in the discharge of her duties, and failed to receive timely and accurate wage statements, Plaintiff is asserting claims that are typical of the claims of the Class.

11. Plaintiff will fairly and adequately represent and protect the interests of the Class in that she has no disabling conflict of interest that would be antagonistic to those of the other members of the Class. Plaintiff retained counsel who are competent and experienced in the prosecution of class action wage and hour violations.

12. Plaintiff and the members of the Class have all similarly suffered irreparable harm and damages as a result of Defendant's unlawful and wrongful conduct, including but not limited to Defendant's systematic failure to timely pay wages earned, systematic practice of failing to reimburse employees for work-related expenses incurred in the discharge of their duties, and failure to provide accurate wage statements pursuant to California law, makes class treatment especially appropriate. Because the commissions earned and expenses incurred by Defendant's employees and Class Members follow common patterns, which are reflected in the records possessed by Defendant, this action will provide substantial benefits to both. Absent this action,

1 Defendant's unlawful conduct will continue unremedied and uncorrected.

2 **FIRST CAUSE OF ACTION**

3 **(Violation Of California Labor Code Section 226)**

4 13. Plaintiff and the members of the proposed subclasses incorporate by reference the
5 allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

6 14. During all relevant periods, Defendant compensated Plaintiff and the members of
7 the proposed subclasses through earned commissions that Defendant failed to pay in a timely
8 manner. This failure violated California Labor Code section 204.

9 15. During all relevant periods, Defendant failed to pay Plaintiff and the members of
10 the proposed subclasses earned commissions within the time required by California law. As a
11 result of this failure, Defendants failed to provide Plaintiff and the members of the proposed
12 subclasses with accurate wage statements as required by California Labor Code section 226.

13 16. Defendant also failed to set forth hours worked on the wage statements for those
14 employees whose compensation was not based solely on a salary as required by California Labor
15 Code section 226(a)(2).

16 17. As a result of Defendant's failures, the wage statements provided by Defendant did
17 not comply with the requirements of California Labor Code section 226. As a result of
18 Defendant's failures, Plaintiff and the members of the proposed subclasses are entitled to recover
19 the damages and penalties set forth in California Labor Code section 210, 226(e)(1) and 226.3.

20 18. Plaintiff and members of the proposed subclasses are therefore entitled to the relief
21 requested below.

22 **SECOND CAUSE OF ACTION**

23 **(Violation Of California Labor Code Section 2802)**

24 19. Plaintiff and the members of the proposed subclasses incorporates by reference the
25 allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

26 20. During all relevant periods, Defendants required Plaintiff and proposed subclass
27 members to incur work-related expenses during their employment. These expenses included those
28 incurred to drive their personal vehicles for work and to pay for internet services to perform work.

1 Defendant failed to reimburse Plaintiff and class members in full for all work-related expenses.

2 21. Plaintiff and members of the proposed subclasses are therefore entitled to the relief
3 requested below.

4 **THIRD CAUSE OF ACTION**

5 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant**
6 **To Business & Professions Code Section 17200, et seq.)**

7 22. Plaintiff and the members of the proposed subclasses incorporate by reference the
8 allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

9 23. Business & Professions Code section 17200, et seq., prohibits acts of unfair
10 competition, defined as an “unlawful, unfair, or fraudulent business act or practice.”

11 24. The policies, acts and practices heretofore described were and are unlawful
12 business acts or practices because Defendant’s failure to timely pay earned wages, failure to
13 provide accurate wage statements, and failure to reimburse employees for work-related expenses
14 incurred in the discharge of their duties violate applicable Labor Code sections, including but not
15 limited to Labor Code sections 204, 226, 1198, and 2802, applicable Industrial Welfare
16 Commission Wage Orders, the Labor Code Private Attorneys General Act of 2004, Labor Code
17 section 2698 et seq., and other provisions of California common and/or statutory law. Plaintiff
18 reserves the right to allege additional statutory and common law violations by Defendant. Such
19 conduct is ongoing to this date.

20 25. Further, the policies, acts or practices described herein were and are an unfair
21 business act or practice because any justifications for Defendant’s illegal and wrongful conduct
22 were and are vastly outweighed by the harm such conduct caused to Plaintiff, proposed subclass
23 members, aggrieved employees, and the members of the general public. Such conduct is ongoing
24 to this date.

25 26. As a result of its unlawful and/or unfair and/or fraudulent acts, Defendant reaps and
26 continues to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed
27 subclass members. Defendant should be made to disgorge ill-gotten gains and provide restitution
28

1 to the proposed subclass members and Plaintiff for the wrongfully withheld wages and expense
2 reimbursements pursuant to Business and Professions Code section 17203.

3 27. Accordingly, Plaintiff and the proposed subclass members respectfully request that
4 the Court award judgment and relief in their favor, to provide restitution, and other types of
5 equitable relief.

6 **FOURTH CAUSE OF ACTION**
7 **(Labor Code Private Attorneys General Act of 2004: Labor Code Sec. 2698)**

8 28. Plaintiff and the members of the proposed subclasses incorporate by reference the
9 allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

10 29. The policies, acts and practices heretofore described were and are unlawful because
11 Defendant's failure to reimburse Plaintiff and aggrieved employees for all work expenses incurred
12 in violation of Labor Code section 2802, including costs for internet at home and for using their
13 personal vehicles, failure to pay all earned commissions within the time prescribed by Labor Code
14 section 204, and failure to provide accurate wage statements that do not depict hours worked in
15 violation of Labor Code section 226 violates applicable Labor Code sections and gives rise to
16 statutory and civil penalties as a result of such conduct, including but not limited to penalties as
17 provided by Labor Code sections 210, 226(3), 226.3, 2699(f), and 2699.5, and applicable
18 Industrial Welfare Commission Wage Orders. Plaintiff, as an aggrieved employee, hereby seeks
19 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
20 on behalf of herself and other current and former employees of Defendant against whom one or
21 more of the violations of the Labor Code was committed.

22 30. On August 31, 2015, Plaintiff gave written notice by certified mail to the California
23 Labor and Workforce Development Agency and Defendant Care 1st Health Plan of Labor Code
24 violations as prescribed by California Labor Code section 2699.3. Plaintiff has not received
25 written notification by the LWDA of an intention to investigate the allegations set forth in
26 Plaintiff's August 31, 2015, letter or written notice of cure by October 5, 2015, as prescribed by
27 California Labor Code section 2699.3.

1 **PRAYER FOR RELIEF**

2 WHEREFORE Plaintiff prays for judgment and relief as follows:

- 3 1. An order certifying that the action may be maintained as a class action;
- 4 2. Compensatory and statutory damages, penalties under Labor Code sections 210,
5 226(e), 226.3, and 2699, and restitution, as appropriate and available under each cause of action,
6 in an amount to be proven at trial based on, inter alia, the unpaid balance of compensation
7 Defendant owes;
- 8 3. Reasonable attorneys' fees pursuant to California Labor Code sections 226, 2699,
9 and 2802;
- 10 4. Costs of this suit;
- 11 5. Pre- and post-judgment interest; and
- 12 6. Such other and further relief as the Court deems just and proper.
- 13 7. Plaintiff is informed and believes that the damages, back wages, expense
14 reimbursements, restitution, value of injunctive relief sought, penalties, interest and attorneys' fees
15 do not exceed an aggregate of \$4,999,999.99 and that the pro-rata value of Plaintiff's individual
16 claims, including damages, back wages, expense reimbursements, restitution, injunctive relief,
17 interest, attorneys' fees, and penalties, does not exceed \$74,999.99.

18 **JURY DEMAND**

19 Plaintiff hereby demands a trial by jury.

20 Date: October 15, 2015

WORKMAN LAW FIRM, PC

21
22 By: 

Robin G. Workman

Attorneys for Diana Murphy and all others
similarly situated