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Attorneys for Plaintiff EVA YANEZ, on behalf of herself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

EVA YANEZ, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

GARDNER FAMILY HEALTH
NETWORK, INC., a California corporation;
and DOES 1 through 10, Inclusive,

Defendants.

Case No. 20CV364033

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay All Wages
2. Rest Period Violations
3. Meal Period Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Business Practices
7. PAGA Penalties for Failure to Pay All Wages
8. PAGA Penalties for Rest Period Violations
9. PAGA Penalties for Meal Period Violations
10. PAGA Penalties for Wage Statement Violations
11. PAGA Penalties for Waiting Time Penalties

DEMAND FOR JURY TRIAL

1 Plaintiff EVA YANEZ, on behalf of herself, and all others similarly situated, alleges:

2 **INTRODUCTION**

3 1. This action arises from GARDNER FAMILY HEALTH NETWORK, INC., a
4 California Corporation (“GARDNER”), and Does 1-10 (“Defendants”)’ failure to provide all
5 regular, minimum, and overtime wages, rest and meal periods or premium wages for rest and
6 meal periods not provided, accurate wage statements, and timely final wages, all of which are
7 unfair business practices, for four years before this action was filed (“Class Period”).

8 2. Plaintiff notified the California Labor and Workforce Development Agency
9 (“LWDA”) of these claims. The LWDA did not intervene, and Defendants did not attempt to
10 cure within the time required. Plaintiff seeks civil penalties as a representative of the State of
11 California, as provided by the Private Attorneys General Act (“PAGA”), on behalf of the
12 aggrieved employees who held the positions identified and suffered one or more of the
13 violations alleged for the period one year and 65 days from the date of filing for PAGA
14 penalties. (“PAGA Period”). A true and correct copy of the January 24, 2020 Notice showing
15 compliance with Labor Code section 2699.3 is attached as Exhibit 1.

16 **JURISDICTION AND VENUE**

17 3. Venue as to each Defendant is proper in this judicial district. Code of Civil
18 Procedure, section 395. Defendants conduct business in Santa Clara County, and are within the
19 Court’s jurisdiction for service of process. The unlawful acts alleged have a direct effect on
20 Plaintiff and those similarly situated within Santa Clara County. Individual class member
21 claims are under the \$75,000 jurisdictional threshold for federal jurisdiction.

22 4. There is no federal question, the issues are based solely on California law,
23 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Business and
24 Professions Code.

25 5. There is no federal question, the issues are based solely on California law,
26 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Business and
27 Professions Code. PAGA actions are not subject to removal.

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THE PARTIES

6. EVA YANEZ is a California resident and worked as a Medical Assistant with Defendants in San Jose, California, starting in 2003. She became a Referral Clerk in 2005, and her employment terminated in August 2019.

7. GARDNER FAMILY HEALTH NETWORK, INC. is a California Corporation, which conducted business in, and employed Plaintiff and Plaintiff Class Members during the Class Period, in the County of Santa Clara.

8. True names and capacities of DOES 1 through 10 are unknown to Plaintiff, who sues them by fictitious names. Code of Civil Procedure § 474. Plaintiff is informed, believes, and alleges, each DOE Defendant is legally responsible in some manner for unlawful acts alleged. Plaintiff will amend to add names and capacities of DOE Defendants when they become known.

9. Plaintiff is informed and believes each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, plan, or policy, and the acts of each Defendant are legally attributable to the other Defendants. Based on employment records and policies and control over Plaintiff, Defendants employed Plaintiff.

GENERAL ALLEGATIONS

10. Plaintiff re-alleges all preceding paragraphs.

11. During the Class Period, Defendants operated health facilities in many California cities, including San Jose, Alviso, Atherton, and Gilroy.

12. During the Class Period, Defendants conducted business and employed Plaintiff and Plaintiff Class members in Santa Clara County and California.

13. During the Class Period, Plaintiff and members of the Plaintiff Class worked shifts over eight hours per day and were paid as hourly, non-exempt employees.

14. Plaintiff and Plaintiff Class Members were required to, and did, clock in and out for each work period, but Defendants rounded these time entries to the quarter hour, reducing the number of hours Plaintiff and Plaintiff Class Members were paid all wages.

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1 15. During the Class Period, Defendants failed to pay for time actually worked by
2 Plaintiff and members of the Plaintiff Class, including overtime, including by failing to include
3 all compensation in the regular rate of pay to calculate the correct overtime rate. For example,
4 Ms. Yanez and Plaintiff Class Members earned non-discretionary awards and other bonuses,
5 including bonuses based on longevity of service, on the anniversary of starting work at
6 Gardner, but the bonuses were not included in the regular rate of pay for calculating overtime.

7 16. During the Class Period, Defendants failed to have a rest period policy
8 compliant with the California Labor Code and IWC Wage Orders, and Plaintiff and Plaintiff
9 Class Members were not provided all uninterrupted, 10-minute rest periods required.

10 17. During the Class Period, Defendants failed to have a meal period policy
11 compliant with the California Labor Code and IWC Wage Orders, and Plaintiff and Plaintiff
12 Class Members were not provided uninterrupted, 30-minute meal periods, starting no later than
13 the end of the fifth hour of work.

14 18. During the Class Period, Plaintiff and members of the Plaintiff Class were not
15 paid all premium wages for non-compliant rest or meal periods.

16 19. For example, when Ms. Yanez and other aggrieved employees worked shifts of
17 ten or more hours, but neither second meal periods nor third rest periods were offered. First
18 meals were provided after five hours at times or were less than 30 minutes. First and second
19 rest periods were not provided and Gardner had no written policy to provide duty free rest
20 periods. Premium wages for rest periods not permitted or meal periods not provided were not
21 paid. For example, during June 7, 2019, pay period, Ms. Yanez worked a shift of 9.5 hours
22 without a meal break. Her wage statement shows no premium wages paid.

23 20. During the Class Period, Defendants had a consistent policy and practice of
24 failing to timely compensate Plaintiff and Plaintiff Class Members for all wages owed upon
25 separation of employment, in violation of California state wage and hour laws.

26 21. During the Class Period, not all wage statements provided to Plaintiff and
27 members of the Plaintiff Class accurately stated total hours worked.

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22. As a result of Defendants' rounding, and other policies, they failed to keep required records for Plaintiff and Plaintiff Class Members by Labor Code sections 1174.

CLASS ACTION ALLEGATIONS

23. Plaintiff re-alleges all preceding paragraphs.

24. Plaintiff seeks to represent a Plaintiff Class defined as:

All persons employed by Defendants as non-exempt employees, at any time starting four years from the filing of this Complaint.

25. Plaintiff seeks to certify a Subclass defined as:

Rounding Subclass

All Plaintiff Class Members who were subject to a policy of rounding time entries and not being paid for actual time worked.

26. Plaintiff seeks to certify a Subclass defined as:

Regular Wage Subclass

All Plaintiff Class Members not paid all regular wages for all hours worked.

27. Plaintiff seeks to certify a Subclass defined as:

Minimum Wage Subclass

All Plaintiff Class Members not paid all minimum wages for all hours worked.

28. Plaintiff seeks to certify a Subclass defined as:

Overtime Subclass

All Plaintiff Class Members not paid all overtime wages for all hours worked over eight per day or forty per week.

29. Plaintiff seeks to certify a Subclass defined as:

Rest Period Subclass

All Plaintiff Class members who worked shifts of three and one-half hours or more without an uninterrupted, duty-free rest period of at least 10 minutes, a second rest period after six hours, or a third after ten hours; and not paid one hour at the regular rate for each such shift.

30. Plaintiff seeks to certify a Subclass defined as:

Meal Period Subclass

All Plaintiff Class members who worked shifts of five hours or more without an uninterrupted, duty-free meal period of at least 30 minutes, starting no later than the end of the fifth hour of work, or shifts of ten hours or more without a second meal period, and not paid one hour at the regular rate for each such shift.

31. Plaintiff seeks to certify a subclass defined as:

Wage Statement Subclass

All Plaintiff Class Members to whom Defendants improperly failed to provide accurate itemized wage statements under Labor Code § 226.

32. Plaintiff seeks to certify a Subclass defined as:

Waiting Time Subclass

All Plaintiff Class Members to whom Defendants failed to timely pay all wages due to them upon termination or resignation under Labor Code §§ 201-203.

33. Plaintiff seeks to certify a subclass of employees defined as follows:

UCL Subclass

All members of the Minimum Wage, Regular Wage, Overtime Wage, and Rest and Meal Period Subclasses.

34. Plaintiff reserves the right to modify the Class description or further divide it into subclasses or limit it to particular issues based on further investigation and discovery. California Rules of Court, Rule 3.765(b).

35. This action may be maintained as a class action because many persons have a well-defined common interest and it is impractical to bring them all before the court. Code of Civil Procedure § 382.

36. **Ascertainable Class**: The proposed Plaintiff Class and Subclasses are ascertainable and can be identified and located by Defendants' payroll and personnel records.

37. **Numerosity**: While the precise number of Plaintiff Class Members has not yet been determined, Plaintiff is informed and believes there are over 100 putative Plaintiff Class Members in California affected by Defendants' policies. Joinder of all members of the proposed Plaintiff Class is not practicable.

38. **Typicality**: Plaintiff's claims are typical of the claims of the proposed Plaintiff Class. Plaintiff and Plaintiff Class and Subclass Members sustained injuries and damages caused by Defendants' common course of conduct in violation of laws, regulations, and statutes as alleged.

39. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and protect the interests of the members of the Plaintiff Class. Proposed Class Counsel, Cohelan

1 Khoury & Singer and Law Offices of Sahag Majarian II, who represent Plaintiff, are competent
2 and experienced in litigating employment class actions. Plaintiff is aware and understands her
3 obligations to faithfully assist in the preparation of the case and to make decisions in the best
4 interests of the putative class.

5 40. **Superiority of Class Action**: A class action is superior to other available means
6 for the fair and efficient adjudication of this controversy. Each Plaintiff Class Member has been
7 damaged, and is entitled to recovery, by Defendants' illegal policies and practices, and a Class
8 action allows them to litigate their claims in the most efficient and economical manner for the
9 parties and judicial system. There are no likely difficulties managing this action that preclude
10 its maintenance as a class action.

11 41. Predominating common questions of law and fact include:

12 a. Whether Defendants compensated Plaintiff Class Members for all
13 minimum, regular, or overtime wages for all hours worked including rounded hours;

14 b. Whether Defendants violated California law by failing to provide
15 Plaintiff Class Members with rest periods before the end of three and one-half hours of work, a
16 second rest period after six hours, or a third after ten hours;

17 c. Whether Defendants violated California law by failing to provide Plaintiff
18 Class Members with meal periods before the end of the fifth hour of work, or a second meal
19 period after the tenth hour of work;

20 d. Whether the Plaintiff Class is entitled to penalties under Section 226;

21 e. Whether the Plaintiff Class is entitled to waiting time penalties under
22 Section 203;

23 f. Whether Defendants violated Labor Code sections 203, 226, 1194, or
24 Wage Order 4-2001, or 5-2001, and violated fundamental public policy as a result;

25 g. Whether the Plaintiff Class and Subclasses are entitled to equitable relief
26 pursuant to Business and Professions Code, sections 17200, *et seq.*

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FIRST CAUSE OF ACTION

Failure to Pay All Wages

(By Plaintiff and the Minimum, Regular, and Overtime Wage Subclasses Against Each Defendant)

42. Plaintiff re-alleges all preceding paragraphs.

43. By failing to pay all wages for hours Plaintiff and members of the Plaintiff Class were under their control, including by rounding time downward to their detriment, Defendants failed to pay minimum, regular, and overtime wages and violated Labor Code sections 218.5, 510, and 1194, and IWC Wage Orders, including 4-2001 and 5-2001.

44. Defendants' unlawful acts deprived Plaintiff and Plaintiff Class Members of minimum, regular, and overtime wages in amounts to be determined at trial, and they are entitled to recover these amounts, with liquidated damages for unpaid minimum wages, and interest, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

Failure to Provide Rest Periods

(By Plaintiff and the Rest Period Subclass Against Each Defendant)

45. Plaintiff re-alleges all preceding paragraphs.

46. By failing to provide uninterrupted duty-free rest periods of at least ten minutes for shifts of three and one-half hours or more, and failing to pay Plaintiff and Rest Period Subclass Members one hour of pay at their regular rate for each day a rest period was not provided, Defendants willfully violated Labor Code section 226.7, and Wage Orders, including 5-2001.

47. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff Class and Subclasses Plaintiff seeks to represent of premium wages in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

THIRD CAUSE OF ACTION

Failure to Provide Meal Periods

(By Plaintiff and the Meal Period Subclass Against Each Defendant)

48. Plaintiff re-alleges all preceding paragraphs.

49. By failing to provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, starting before the end of the fifth hour of work, and failing to pay

1 Plaintiff and Meal Period Subclass Members one hour of pay at their regular rate for each day a
2 meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and
3 512, and IWC Wage Orders, including No. 4-2001 and 5-2001.

4 50. Defendants' unlawful acts deprived Plaintiff and the members of the Plaintiff
5 Class and Subclasses Plaintiff seeks to represent of premium wages and/or other compensation
6 in amounts to be determined at trial, and they are entitled to recover such amounts, plus
7 interest, attorneys' fees, and costs.

8 **FOURTH CAUSE OF ACTION**

9 **Failure to Provide Accurate Itemized Wage Statements**
10 **(By Plaintiff and the Wage Statement Subclass Against Each Defendant)**

11 51. Plaintiff re-alleges all preceding paragraphs.

12 52. Defendants must itemize in wage statements all deductions from payment of
13 wages and to accurately report, among other things, total hours worked, all hourly wage rates
14 earned, and gross and net wages earned. Labor Code § 226(a). Defendants knowingly and
15 intentionally failed to comply with Labor Code section 226(a) on wage statements provided to
16 Plaintiff and members of the Wage Statement Subclass because, among other reasons, the wage
17 statements failed to accurately set forth all hours worked, and all hourly rates earned, and gross
18 and net wages earned.

19 53. The wage statements issued to Plaintiff and members of the Plaintiff Class were
20 inaccurate and incorrect causing confusion and damage to Plaintiff and members of the
21 Plaintiff Class and concealed from them their earnings to which they were entitled to receive by
22 law. As a consequence of Defendants' knowing and intentional failure to comply with section
23 226(a), Plaintiff and Wage Statement Subclass Members are entitled to actual damages or
24 penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b), with
25 interest and attorneys' fees and costs.

26 **FIFTH CAUSE OF ACTION**

27 **Failure to Pay Wages Due at Termination**
28 **(By Plaintiff and the Waiting Time Subclass Against Each Defendant)**

54. Plaintiff re-alleges all preceding paragraphs.

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1 55. Defendants had a consistent and uniform policy, practice, and procedure of
2 willfully failing to timely pay former employees all earned wages. Labor Code sections 201
3 and 202 require Defendants to pay their employees all wages due within the time required by
4 law. If an employer willfully fails to timely pay such wages the employer must, as a penalty,
5 continue to pay the subject employee's wages until the back wages are paid in full or an action
6 is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

7 56. Members of the Waiting Time Subclass are no longer employed by Defendants.

8 57. Defendants willfully failed to pay Waiting Time Subclass Members wages due
9 at termination or within 72 hours of resignation, and failed to pay those sums for 30 days after
10 that.

11 58. Defendants' willful failure to pay wages to the Waiting Time Subclass Members
12 violated Labor Code section 203 because Defendants knew wages were due to the Waiting
13 Time Subclass Members, but failed to pay them.

14 **SIXTH CAUSE OF ACTION**
15 **Violations of the Unfair Competition Law**
16 **(By Plaintiff and the UCL Subclass Against Each Defendant)**

17 59. Plaintiff re-alleges all preceding paragraphs.

18 60. At all relevant times, Defendants engaged in unlawful and unfair business
19 practices in violation of Business and Professions Code sections 17200, et seq. through
20 common and systemic employment policies and practices by failing to provide the employment
21 protections, wages, premiums, and other funds and property owed to Plaintiff and the UCL
22 Subclass, as alleged throughout this Complaint, in violation of the Labor Code and IWC Wage
23 Orders.

24 61. Defendants' business practices deprived Plaintiff and the UCL Subclass of
25 compensation and other funds to which they are legally entitled, constitutes unlawful and unfair
26 business practices, provides an unfair advantage to Defendants over their competitors who
27 comply with wage and hour and employment laws, and unjustly enriches them.

28 62. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as
alleged in throughout this Complaint, Plaintiff, as an individual and on behalf of the Plaintiff

1 Class Members, seeks restitution of all monies and property withheld, acquired or converted by
2 Defendants pursuant to Business and Professions Code sections 17202, 17203, 17204, and
3 17208.

4 63. Plaintiff and members of the Plaintiff Class are entitled to an injunction,
5 restitution, and other equitable relief against such unlawful practices to return all funds over
6 which Plaintiff and members of the Plaintiff Class have an ownership interest and to prevent
7 future damage pursuant to Business and Professions Code sections 17200, et seq.

8 **SEVENTH CAUSE OF ACTION**
9 **PAGA Penalties for Failure to Pay Wages**
10 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

11 64. Plaintiff re-alleges all preceding paragraphs.

12 65. “Notwithstanding any agreement to work for a lesser wage, any employee
13 receiving less than the legal minimum wage or the legal overtime compensation applicable to
14 the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
15 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s
16 fees, and costs of suit.” Labor Code § 1194(a).

17 66. “[A]ny provision of this code that provides for a civil penalty to be assessed and
18 collected by the Labor and Workforce Development Agency or any of its departments,
19 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an
20 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
21 himself or herself and other current or former employees pursuant to the procedures specified
22 in Section 2699.3.” Labor Code § 2699(a).

23 67. “For all provisions of this code except those for which a civil penalty is
24 specifically provided, there is established a civil penalty for a violation of these provisions []
25 (2) If, at the time of the alleged violation, the person employs one or more employees, the civil
26 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
27 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
28 subsequent violation.” Labor Code § 2699(f)(2).

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68. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

69. Defendants failed to pay minimum, regular, and overtime wages during the PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

70. Defendants' conduct violates Wage Orders Nos. 4-2001 and 5-2001, by failing to pay minimum wages to employees. Plaintiff will also seek \$50 for the initial pay period an employee was underpaid, and \$100 for each subsequent violation.

EIGHTH CAUSE OF ACTION

PAGA Penalties for Failure to Provide Rest Periods (By Plaintiff and Aggrieved Employees Against Each Defendant)

71. Plaintiff re-alleges all preceding paragraphs.

72. By failing to authorize and permit Plaintiff a rest period of at least 10 minutes for every four (4) hours or major fraction thereof worked per day, Defendants willfully violated provisions of Labor Code section 226.7 and Wage Orders Nos. 4-2001 and 5-2001.

73. By failing to provide one hour of pay at their regular rate of compensation when rest periods were not permitted or authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and Wage Orders Nos. 4-2001 and 5-2001.

74. During the applicable statutory period, Defendants failed to provide rest periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code section 2699(f)(2).]

NINTH CAUSE OF ACTION

PAGA Penalties for Failure to Provide Meal Periods (By Plaintiff and Aggrieved Employees Against Each Defendant)

75. Plaintiff re-alleges all preceding paragraphs.

76. By failing to provide duty-free meal periods of at least 30 minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and a second meal period at least 30 minutes for shifts of ten hours or more, which began before the end of the tenth hour of work, Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Orders 4-2001 and 5-2001.

77. By failing to pay employees one hour of pay at their regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Orders No. 4-2001 and 5-2001.

78. During the PAGA Period, Defendants failed to provide compliant meal periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code section 2699(f)(2).

TENTH CAUSE OF ACTION

**PAGA Penalties for Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

79. Plaintiff re-alleges all preceding paragraphs.

80. Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing, among other things, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee. Labor Code § 226(a).

81. Defendants intentionally and willfully violated Section 226 by failing to provide wage statements which included information called for in Section 226(a)(1) (2), (5) and (9).

82. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations of Labor Code section 226. Labor Code § 2699.5.

83. Labor Code section 226.3 provides for civil penalties for violations of Section 226. Plaintiff seeks civil penalties of \$250 for the initial violation and \$1,000 for each subsequent violation.

ELEVENTH CAUSE OF ACTION

**PAGA Penalties for Failure to Pay Wages Due at Termination
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

84. Plaintiff re-alleges all preceding paragraphs.

85. Labor Code sections 201-202 require employers to pay wages earned by employees within certain times. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' former employees. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an

employee's wages for 30 days, or until back wages are paid in full. Labor Code section 203.

86. Defendants failed to pay Plaintiff and other aggrieved employees all final wages, including minimum, regular, and overtime wages, and meal and rest period premium wages, as required by Labor Code sections 201-202.

87. Defendants failed to pay Plaintiff and other aggrieved employees penalties due them based on Defendants' failure to pay all final wages in a timely manner as required by Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

- A. For certification of this action as a class action;
- B. For appointment of Plaintiff as the representative of the Plaintiff Class;
- C. For appointment of counsel for Plaintiff as Class Counsel;
- D. For injunctive relief;
- E. For compensatory damages in an amount according to proof;
- F. For all interest accrued to date;
- G. For disgorgement of all amounts wrongfully obtained;
- H. This action be maintained as a PAGA Representative Action, and Plaintiff and his counsel be provided with enforcement capability as if the action were brought by the DLSE;
- I. For recovery of civil penalties under Labor Code section 2699 for failure to pay all minimum and overtime wages owed pursuant to Section 1194, according to proof;
- J. For recovery of civil penalties under Labor Code sections 558 and 1197.1 for failing to pay minimum and overtime wages for all hours worked;
- K. For recovery of civil penalties under Labor Code section 2699 for failure to authorize and permit rest periods, pursuant to Labor Code section 226.7(a), according to proof;
- L. For recovery of civil penalties under Labor Code section 2699 for failure to pay all rest period premiums due pursuant to Labor Code section 226.7(b), according to proof;
- M. For recovery of civil penalties under Labor Code section 2699 for failure to

1 provide meal periods compliant with Labor Code sections 226.7 and 512, according to proof;

2 N. For recovery of civil penalties under Labor Code section 2699 for failure to pay
3 all meal period premiums due pursuant to Labor Code section 226.7, according to proof;

4 O. For recovery of civil penalties under Labor Code section 2699 for failing to
5 provide accurate itemized wage statements pursuant to Labor Code sections 226 and 226.3,
6 according to proof;

7 P. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
8 timely pay all final wages (and waiting time penalties) on time each pay period or upon
9 termination of employment pursuant to Labor Code sections 201-203;

10 Q. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
11 pay statutory waiting time penalties due pursuant to Labor Code section 203;

12 R. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to
13 the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i);

14 S. For reasonable attorneys' fees and costs; and

15 T. For such other relief the Court deems just and proper.

16
17 Dated: April 3, 2020

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

18
19 By: Jeff Geraci
Jeff Geraci, Esq.

20 Attorneys for Plaintiff EVA YANEZ, on behalf of
21 herself and all others similarly situated

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff demands a jury trial of all claims triable as of right by jury.

24 Dated: April 3, 2020

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

25
26 By: Jeff Geraci
Jeff Geraci, Esq.

27 Attorneys for Plaintiff EVA YANEZ, on behalf of
28 herself and all others similarly situated

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

January 24, 2020

Notice Via Online Submission

California Labor and Workforce Development Agency

Via Certified U.S. Mail With Return Receipt

Gardner Family Health Network, Inc.
1621 Gold Street
Alviso, California 95002

Sarju Naran, Esq
Lisa N. Moniz, Esq.
HOGE FENTON
60 South Market Street, Suite 1400
San Jose, CA 95113-2396

Gardner Family Health Network, Inc.
c/o Mr. Reymundo Espinoza
160 E. Virginia St., Suite 100
San Jose, California 95112

Re: Ms. Eva Yanez, on behalf of herself and similarly-situated Gardner Family Health Network, Inc. employees, as an individual and proposed Representative of the State of California

Dear PAGA Administrator:

Ms. Eva Yanez submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by Gardner Family Health Network, Inc. ("Gardner" or "Defendant"). Ms. Yanez seeks to represent herself and other aggrieved employees in a Private Attorneys General Act ("PAGA") action. Labor Code §§ 2698, *et seq.* For purposes of this notice, "aggrieved employees" includes Gardner's non-exempt hourly employees.

Factual Statement

Gardner Family Health Network, Inc. operates health facilities in many California cities, including San Jose, Alviso, Atherton, and Gilroy. Ms. Yanez was hired as a Medical Assistant in 2003, became a Referral Clerk in 2005, and worked in several facilities in San Jose. She left Gardner in August 2019. During her employment, including one year before filing this Notice, Ms. Yanez and other aggrieved employees were subject to policies which violate the California Labor Code.

The demands of the work resulted in Ms. Yanez and other aggrieved employees working, at times, shifts of ten or more hours, but neither second meal periods nor third rest periods were offered. First meals were provided after five hours at times or were less than 30 minutes. First and second rest periods were not provided and Gardner had no written policy to provide duty free rest periods. Premium wages for rest periods not permitted or meal periods not provided were not paid. For example, during the pay period ending June 7, 2019, Ms. Yanez worked a shift of 9.5 hours without a meal break. Her wage statement for that date, and all dates, show no premium wages paid.

Ms. Yanez and other aggrieved employees were also subject to Gardner's policy of rounding time entries to the nearest 15 minutes. Gardner's policies encouraged punctuality and penalized tardiness. It does not appear Gardner advised aggrieved employees of the rounding policy or issued a written policy describing it. Gardner did not issue any policies advising employees not to work before or after scheduled shift times. As a result of these policies, Ms. Yanez and other aggrieved employees were not paid all earned minimum, regular, overtime, and double time wages.

Ms. Yanez and other aggrieved employees earned non-discretionary awards and other bonuses. Gardner agrees to pay Ms. Yanez, and all aggrieved employees, a bonus based on longevity. Aggrieved employees, including Ms. Yanez received longevity bonuses on the anniversary of starting work at Gardner, but the bonuses were not included in the regular rate of pay for calculating overtime.

Because Ms. Yanez and the aggrieved employees are not paid all earned wages, and their hours worked are not accurately kept, the wage statements issued during their employment are inaccurate, and they are not paid all final wages owed to them when their employment terminates.

As a result of the policies described above, Gardner violates Industrial Welfare Commission Wage Orders, including 4-2001 and 5-2001, and the Labor Code provisions described below.

Labor Code §§ 510 and 1194 (Minimum, Regular, and Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay at least minimum wages for all hours worked, overtime wages for hours worked over eight per day or forty per week, and double time wages for hours over twelve. By paying less for rounded time, and not paying for all actual time worked by Ms. Yanez and aggrieved employees, Gardner did not pay for all time worked, including overtime.

Failure to pay minimum wage also violates municipal minimum wage laws. For example, for aggrieved employees working in the City of San Jose, such as Ms. Yanez, the failure to pay all minimum wages also violates San Jose Municipal Code Section 4.100 *et seq.*, which independently requires payment of minimum wage and establishes a civil penalty of \$50 for each employee for each day minimum wage is not paid. A virtually identical code section in the Palo Alto Municipal Code covers employees working in Atherton. Palo Alto Municipal Code Section 4.62.010 *et seq.*

Labor Code §§ 512 and 226.7 (Meal and Rest Periods and Premium Wages)

Gardner must authorize and permit employees "10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours," and 30 minutes for shifts of 10 hours or more. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1029-30 (2012).

Gardner must provide employees a 30-minute, uninterrupted meal period "after no more than five hours of work," and "a second meal period after no more than 10 hours work." *Id.* at 1049.

If rest or meal breaks are late, missed, or too short, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7; Industrial Welfare Commission ("IWC") Wage Order 4-2001 and 5-2001.

Gardner Family Health Network, Inc.
Re: Ms. Eva Yanez
January 24, 2020
Page 3

Because of Gardner's policies and practices, or the lack of complaint policies, Ms. Yanez and other aggrieved employees did not receive compliant rest and meal periods, including second meals and third rest periods. Premium wages were not paid for non-compliant breaks.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, "total hours worked by the employee," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Cal. Labor Code § 226(a)(2)(9). Gardner's wage statements do not show total hours worked, accurately record time, including for meal periods, and do not pay for all time worked.

Wage statements issued to Ms. Yanez and the aggrieved employees also incorrectly show the rate for double time pay, for example in Ms. Yanez' wage statement for pay date February 15, 2019. Gardner was required to list its legal name as an employer on the wage statements, but only listed "Gardner Family Health." Wage statements provided to Ms. Yanez and aggrieved employees violate section 226. (See, for example, the March 15, 2019 statement attached to this Notice)

Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Cal. Labor Code § 201. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. As a result of its failure to pay all wages earned described above, Gardner failed to pay all final wages due Ms. Yanez and other aggrieved employees, and violated Sections 201-203.

Conclusion

Defendant's employment practices, as described in detail above, violate IWC Wage Orders 4-2001, 5-2001 and the California Labor Code, including sections 201-204, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197.1, 1198, and 2699.

Our client requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Ms. Yanez will pursue claims for statutory penalties and seek all remedies available for violations of the Labor Code and Industrial Welfare Commission Wage Orders 4-2001 and 5-2001, and local Municipal Codes, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER


Jeff Geraci, Esq.

cc: *Via email only*
Sahag Majarian, Esq.
sahagii@aol.com

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Earnings Statement



GARDNER FAMILY HEALTH
P.O. BOX 1240
ALVISO, CA. 95002

Period Beginning: 02/24/2019
Period Ending: 03/09/2019
Pay Date: 03/15/2019

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 5
CA: 5

EVA YANEZ

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Regular	23.6600	72.00	1,703.52	9,582.30
Overtime	35.4900	12.00	425.88	1,756.76
Pto/Sick	23.6600	8.00	189.28	1,017.38
Doubletime				94.64
Holiday				567.84
Pto				189.28
Gross Pay			\$2,318.68	13,208.20

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$2,148.68

Other Benefits and Information

	this period	total to date
Group Term Life	2.24	13.44
Esl		27.20
Pto Balance		174.35

Deductions	Statutory	
	Federal Income Tax	-91.55 427.03
	Social Security Tax	-142.66 784.97
	Medicare Tax	-33.36 183.58
	CA State Income Tax	-14.01 45.30
	CA SUI/SDI Tax	-23.18 127.67
	Other	
	Hsa Ee	-20.00* 120.00
	401K Loan	-143.87 863.22
	401K\$\$	-150.00* 900.00
	Dental Pre Tax	28.00
	Medical	412.88
	Misc Deduction	24.30
	Union Dues \$\$	130.23
	Net Pay	\$1,700.05
	Net Check	\$1,700.05

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GARDNER FAMILY HEALTH
P.O. BOX 1240
ALVISO, CA. 95002

Payroll check number: 0000029994
Pay date: 03/15/2019

Pay to the
order of:

EVA YANEZ

This amount:

ONE THOUSAND SEVEN HUNDRED AND 05/100 DOLLARS

\$1700.05

BANK OF AMERICA

VOID NON-NEGOTIABLE VOID NON-NEGOTIABLE

VOID AFTER 180 DAYS



REDACTED

YANEZ0065