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By: Kristina Vargas, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

VANESSA IBARRA, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

v.

PIH HEALTH, INC., a California
Corporation; PIH HEALTH HOSPITAL -
WHITTER, a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. 20STCV15291

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
226(a); AND**

**(2) VIOLATION OF CAL. LABOR CODE §
201-203;**

**(3) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.***

DEMAND EXCEEDS \$25,000.00

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1 Plaintiff VANESSA IBARRA (“Plaintiff”) hereby submits this First Amended Class
2 Action Complaint (“Complaint”) against Defendant PIH HEALTH, INC., a California
3 Corporation (“PIH HEALTH”), PIH HEALTH HOSPITAL - WHITTER, a California
4 Corporation (“PIH WHITTIER”), and DOES 1-50 (hereinafter collectively referred to as
5 “Defendants”), individually and on behalf of a Class of all other similarly situated current and
6 former employees of Defendants for penalties and/or damages for violations of the California
7 Labor Code, including without limitation, failure to provide employees with accurate itemized
8 wage statements and pay employees their sick pay at their regular rate of pay, as follows:

9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction under California Labor Code §§
11 201-203, 226, 2698, *et seq.*, and the California Industrial Welfare Commission’s (“IWC”) Wage
12 Orders.

13 2. This Complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code against employees of Defendants.

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants jointly
16 and severally have acted knowingly and intentionally by failing to provide accurate itemized wage
17 statements identifying all required information, including without limitation, the correct rates of
18 overtime pay and total hours worked.

19 **JURISDICTION AND VENUE**

20 4. The Court has jurisdiction over the violations of the California Labor Code §§ 201-
21 203, 226, and 2698, *et seq.*

22 5. Venue is proper in Los Angeles County because Defendants maintain business
23 locations in this County and Plaintiff worked at Defendants’ hospital located in this County.

24 **PARTIES**

25 6. On or about January 8, 2017, Plaintiff began working for Defendants as a MRI
26 technologist at Defendants’ hospital located in Whittier, California. Plaintiff was terminated on
27 March 24, 2020. During her employment, Plaintiff was paid various non-discretionary incentive
28 wages, including, but not limited to, shift differential wages, as well as overtime wages. Plaintiff

1 was also paid wages for sick time.

2 7. Defendant PIH HEALTH provides medical services in various cities including
3 Whittier in the Los Angeles County, California.

4 8. Defendant PIH WHITTIER provides medical services in Whittier, California.

5 9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
6 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
7 California Labor Code §§ 201-203 226, and 2698, *et seq.*

8 10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
9 mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and
10 partnerships, licensed to do business and actually doing business in the State of California.

11 11. As such, and based upon all the facts and circumstances incident to Defendants'
12 business in California, Defendants are subject to California Labor Code §§ 201-203, and 226.

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

20 13. At all times herein mentioned, each of said Defendants participated in the doing of
21 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
22 Defendants, and each of them, were the agents, servants and employees of each of the other
23 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
24 within the course and scope of said agency and employment.

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

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

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

6 16. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
11 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
12 damages as herein alleged.

13 **CLASS ACTION ALLEGATIONS**

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

- 16 a. All current and former non-exempt California employees who were paid
17 shift differential and/or overtime wages from Defendant at any time during
18 the period of time from April 6, 2019, through the present (the “Wage
19 Statement Class”).
- 20 b. All non-exempt California employees who were paid non-discretionary
21 incentive wages including, but not limited to, shift differential wages and
22 sick pay from Defendant and whose employment ended, either voluntarily
23 or involuntarily, at any time during the period of time from April 6, 2017,
24 through the present (the “Sick Pay Class”).

25 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
26 that joinder of all members would be impractical, if not impossible. The identity of the members
27 of the Class is readily ascertainable by review of the Defendants records, including payroll records.
28 Plaintiff is informed and believes, and based thereon alleges, that the Defendants failed to provide
accurate itemized wage statements to employees in violation of Labor Code § 226 and pay

1 employees their sick pay at their regular rate of pay in violation of Labor Code §§ 201-203.

2 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
3 necessary steps to represent fairly and adequately the interests of the class defined above.
4 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the
5 named Plaintiffs. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in
6 the past and currently have a number of wage-and-hour class actions pending in California courts.

7 20. Defendants uniformly administered a corporate policy, practice of failing to provide
8 accurate itemized wage statements to employees in violation of Labor Code §226 and pay
9 employees their sick pay at their regular rate of pay in violation of Labor Code §§ 201-203.

10 21. **Common Question of Law and Fact:** There are predominant common questions
11 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
12 concerning the Defendants failure to provide accurate itemized wage statements to employees in
13 violation of Labor Code § 226 and pay employees their sick pay at their regular rate of pay in
14 violation of Labor Code §§ 201-203.

15 22. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
16 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
17 and typical manner as the Class members. Plaintiff was not provided proper and accurate payroll
18 records identifying all information required by Labor Code § 226(a). Specifically, Defendants
19 violated Labor Code § 226 by, among other actions, failing to list the accurate total hours worked.
20 Specifically, whenever overtime and/or shift differential wages were paid, the wage statements
21 issued by Defendants did not identify the overtime rate as 1.5 times the regular rate of pay.
22 Rather, overtime rates appeared as the regular hourly rate of pay and/or a lower rate of pay. In
23 addition, Defendants failed to list the accurate total hours worked whenever overtime and/or shift
24 differential wages were paid. In particular, whenever overtime and/or shift differential wages, the
25 wage statements issued by the Defendants did not identify the accurate total hours worked.
26 Similarly, when the hours shown on the wage statements are added up, they do not appear to add
27 up to the actual total hours worked. Further, Defendants violated Labor Code §§ 201-203 by
28 failing to pay sick pay at the regular rate of pay. Specifically, Plaintiff and all members of the
class routinely earned non-discretionary incentive wages such as shift differential wages and thus

1 increased their rates of pay. However, when sick pay was paid, it was paid at the Plaintiff and
2 Class Members' base rate of pay rather than the regular rate of pay. Thus, Plaintiff is a member
3 of the Class and has suffered the alleged violations of California Labor Code §§ 201-203, and
4 226.

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

11 24. The nature of this action and the format of laws available to Plaintiff and members
12 of the Class identified herein make the class action format a particularly efficient and appropriate
13 procedure to redress the wrongs alleged herein. If each employee were required to file an
14 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage
15 since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff
16 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
17 pursue an individual remedy would also discourage the assertion of lawful claims by employees
18 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.

19 25. The prosecution of separate actions by the individual class members, even if
20 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
21 individual Class members against the Defendants and which would establish potentially
22 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
23 individual Class members which would, as a practical matter, be dispositive of the interest of the
24 other Class members not parties to the adjudications or which would substantially impair or
25 impede the ability of the Class members to protect their interests. Further, the claims of the
26 individual members of the Class are not sufficiently large to warrant vigorous individual
27 prosecution considering all of the concomitant costs and expenses.

28 26. Such a pattern, practice and uniform administration of corporate policy regarding

1 illegal employee compensation described herein is unlawful and creates an entitlement to recovery
2 by Plaintiffs and the Class identified herein, in a civil action any and all applicable penalties and/or
3 damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor
4 Code §§ 218.5, 226 and 1194 and Code of Civil Procedure § 1021.5.

5 27. Proof of a common business practice or factual pattern, which the named Plaintiffs
6 experienced and are representative of, will establish the right of each of the members of the Class
7 to recovery on the causes of action alleged herein.

8 28. The Class is commonly entitled to a specific fund with respect to the compensation
9 illegally and unfairly retained by the Defendants. The Class is commonly entitled to restitution of
10 those funds being improperly withheld by the Defendants. This action is brought for the benefit of
11 the entire class and will result in the creation of a common fund.

12 **FIRST CAUSE OF ACTION**

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

14 **(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFF AND THE WAGE**
15 **STATEMENT CLASS)**

16 29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 as though
17 fully set for herein.

18 30. The Defendants failed in its affirmative obligation to provide accurate itemized
19 wage statements in violation of Labor Code § 226(a). Specifically, the Defendants violated Labor
20 Code § 226(a)(2) and (9) by, among other actions, failing to list the accurate total hours worked
21 and accurate rate of pay and corresponding number of hours worked for each hourly rate, for wage
22 statements furnished to Plaintiff and Class Members whenever overtime and/or shift differential
wages were paid.

23 31. Specifically, whenever overtime and/or shift differential wages were paid, the wage
24 statements issued by Defendants did not identify the overtime rate as 1.5 times the regular rate of
25 pay. Rather, overtime rates appeared as the regular hourly rate of pay and/or a lower rate of pay.
26 In addition, Defendants failed to list the accurate total hours worked whenever overtime and/or
27 shift differential wages were paid. In particular, whenever overtime and/or shift differential wages,
28 the wage statements issued by the Defendants did not identify the accurate total hours worked.

1 Similarly, when the hours shown on the wage statements are added up, they do not appear to add
2 up to the actual total hours worked. Plaintiff is informed and believes, and based thereon alleges,
3 that that the Defendants' violation of Section 226(a) is class-wide.

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

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE §§ 201-203**

11 **(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFF AND THE SICK PAY**
12 **CLASS)**

13 33. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 as though
14 fully set for herein.

15 34. Labor Code §246(l)(1) requires that nonexempt employees be paid sick time in the
16 same manner as the regular rate of pay for the workweek in which the employee uses paid sick
17 time, whether or not the employee actually works overtime in that workweek.

18 35. Labor Code §246(l)(2) requires that paid sick time for nonexempt employees be
19 calculated by dividing the employee's total wages, not including overtime premium pay, by the
20 employee's total hours worked in the full pay periods of the prior 90 days of employment.

21 36. Defendants violated Labor Code §246 by failing to pay sick pay at the regular rate
22 of pay. Plaintiff and Class Members routinely earned non-discretionary incentive wages such as
23 shift differential wages and thus increasing their regular rate of pay. However, when sick pay was
24 paid, it was paid at their base rate of pay rather than the regular rate of pay, as required under
25 Labor Code §246.

26 37. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
27 members of the Class their correct wages and accordingly owe waiting time penalties pursuant to
28 Labor Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such
failure to pay sick pay at regular rate was willful, such that Plaintiff and Class Members whose

1 employment has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-
2 203.

3 **THIRD CAUSE OF ACTION**

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

5 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL**
6 **DEFENDANTS)**

7 38. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37 as though
8 fully set for herein.

9 39. Plaintiff brings this cause of action as a proxy for the State of California pursuant to
10 the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*, and in this capacity
11 seeks penalties on behalf of the State of California and all similarly aggrieved employees for the
12 violations of Labor Code §§ 201-203, 226, and 246 for the time period of April 6, 2019, through
13 the present. As alleged above, Defendant violated Sections 201-203, 226, and 246 by failing to
14 pay sick pay at the correct and higher regular rate of pay and failing to provide accurate itemized
15 wage statements listing the correct, higher regular rate of pay for sick pay wages.

16 40. On or about April 6, 2020, Plaintiff submitted written notice of these violations to
17 the Labor Workforce Development Agency (the “LWDA”) and via certified mail to Defendant.
18 As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether it
19 intends to investigate the violations of the Labor Code. As such, Plaintiff is permitted to proceed
20 on his PAGA claims in this Court and, accordingly, seeks all applicable civil penalties pursuant to
21 Labor Code §§ 226.3 and 2699, as well as costs and attorneys’ fees.

22 **PRAYER FOR RELIEF**

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

- 25 1. For an order certifying the proposed Class;
- 26 2. For an order appointing Plaintiff as the representative of the Class as described
27 herein;
- 28 3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to California

1 Labor Code § 226, and for costs and attorneys' fees;

2 5. Upon the Second Cause of Action, for unpaid wages and/or penalties pursuant to
3 California Labor Code §§ 201-203, and for costs and attorneys' fees pursuant to Labor Code §§
4 218.5 and 1194;

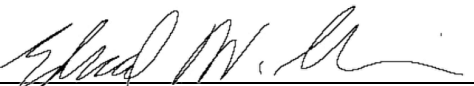
5 6. Upon the Third Cause of Action, for civil penalties pursuant to the PAGA,
6 including without limitation, Labor Code §§ 226.3 and 2699, and for costs and attorneys' fees;

7 7. On all causes of action, for attorneys' fees and costs as provided by California
8 Labor Code §§218.5, 226, 1194, 2699 and Code of Civil Procedure § 1021.5; and

9 8. For such other and further relief as the Court may deem just and proper.

10 DATED: June 8, 2020

LAW OFFICES OF CHOI & ASSOCIATES

11
12 By: 
13 Edward W. Choi
14 Attorneys for PLAINTIFF and the CLASS

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St. Suite 1250, Los Angeles, California 90071.

On June 8, 2020, I served the foregoing document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

Peggy Chulack
C/O PIH HEALTH INC.
PIH Health HOSPITAL WHITTIER
12401 Washington Blvd
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 X

BY MAIL

 X

As follows: I am "readily familiar" with the practice of Choi & Associates, Attorneys at Law for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence placed in the outgoing mail tray in my office for collection would be deposited in the United States Mail that same day in the ordinary course of business.

BY PERSONAL SERVICE

I caused such envelope to be delivered by hand to the offices of the addressee.

BY FACSIMILE TRANSMISSION

I caused a true and complete copy of the document(s) described above to be transmitted by facsimile transmission to the telephone number(s) of the person(s) set forth above.

 x

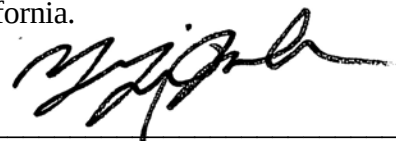
(State)

I declare under penalty of perjury that the foregoing is true and correct.

(Federal)

I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 8, 2020, at Los Angeles, California.



Michelle Lee