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

DAEMIAN MARTIN and ROGER JOHNSON, as
individuals and on behalf of all others similarly
situated, and as private attorneys general,

Plaintiffs,

vs.

LOMA LINDA UNIVERSITY MEDICAL
CENTER, a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CIVDS2017184

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) Unpaid Sick Pay Wages
(Lab. Code §§ 201-204, 233, 246)**
- (2) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and**
- (3) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)**

DEMAND OVER \$25,000.00

1 On behalf of themselves and other similarly situated current and former employees, and as
2 proxies for the State of California, Plaintiffs Daemian Martin and Roger Johnson submit this First
3 Amended Class and Representative Action Complaint (the “Complaint”) against Defendant, Loma
4 Linda University Medical Center, and Does 1 through 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants. The
8 Complaint seeks penalties, damages, and other relief pursuant to, among other provisions, Labor Code
9 sections 201-204, 210, 218, 218.5, 218.6, 233, 246, 248.5, and 2698 et seq., and the Unfair Competition
10 Law, codified at Business and Professions Code sections 17200 et seq. (the “UCL”).¹

11 2. Plaintiffs are informed and believe that Defendants have jointly and severally acted
12 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
13 failing to pay or timely pay all sick pay wages. Specifically, Defendants routinely fail to pay sick pay
14 wages at the regular rate of pay. While Plaintiffs and other non-exempt employees regularly earn non-
15 discretionary remuneration, including for example shift differential wages, Defendants fail to consider
16 such wages when paying sick pay wages. Rather than pay sick pay wages at the regular rate of pay,
17 Defendants underpay sick pay wages to Plaintiffs and other non-exempt employees at their base rates of
18 pay. Defendants thus fail to pay and fail to timely pay all sick pay wages.

19 3. Plaintiffs are informed and believe that Defendants have engaged in, among other things,
20 a system of willful violations of the Labor Code by creating and maintaining policies, practices, and
21 customs that knowingly deny its employees the above stated rights and benefits. The policies, practices,
22 and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business
23 advantage over businesses that routinely adhere to the strictures of the Labor Code.

24 JURISDICTION AND VENUE

25 4. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
26 Defendants’ violations of Sections 201-204, 210, 233, and 246.

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¹ Except as otherwise noted, all “Section” references are to the Labor Code.

5. Venue is proper in the County of San Bernardino. Plaintiffs worked for Defendants in Loma Linda, California.

PARTIES

6. Plaintiff Martin started working for Defendants in or about August of 2013 and worked in California for Defendants for 30 or more days within a year. Throughout his employment as a registered nurse, Martin has been paid on an hourly basis as a non-exempt employee. In addition to his base hourly wages, Martin routinely earns additional non-discretionary remuneration, including for example various shift differential wages, that increase his earnings and regular rate of pay. Throughout his employment, Martin has accrued and actually used sick leave. When sick leave is used in workweeks that Martin earns non-discretionary remuneration in addition to his base hourly wages, sick pay wages are paid at Martin's base rate of pay rather than his regular rate of pay. Plaintiff Martin is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the Labor Code and the UCL.

7. Plaintiff Johnson started working for Defendants in or about August of 2010 and worked in California for Defendants for 30 or more days within a year. Until his employment in the environmental services department ended in or about June of 2020, Johnson was paid on an hourly basis as a non-exempt employee. In addition to his base hourly wages, Johnson routinely earned additional non-discretionary remuneration, including for example various shift differential wages, that increased his earnings and regular rate of pay. Throughout his employment, Johnson accrued and actually used sick leave. When sick leave was used in workweeks that Johnson earned non-discretionary remuneration in addition to his base hourly wages, sick pay wages were paid at Johnson's base rate of pay rather than his regular rate of pay. Plaintiff Johnson is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the Labor Code and the UCL.

8. Plaintiffs are informed and believe that Loma Linda University Medical Center was and is a California corporation. Plaintiffs are informed and believe that at all times herein mentioned named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that were and are licensed to do business or actually doing business in the State of

California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204, 210, 233, and 246, and the UCL.

9. Plaintiffs do not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true names and capacities are known. Plaintiffs are informed and believe that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

10. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

11. Plaintiffs are informed and believe that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

12. Plaintiffs are informed and believe that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

13. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiffs seek class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who were paid sick pay wages in any workweek in which they earned non-discretionary remuneration, including but not limited to shift differential wages, since April 6, 2016 (the "Restitution Class"), and (ii) all current and former non-exempt employees of Defendants in the State of

1 California who were paid sick pay wages in any workweek in which they earned non-discretionary
2 remuneration, including but not limited to shift differential wages, since April 6, 2017 (the “Wage
3 Class”). The Restitution Class and Wage Class are collectively referred to as the “Class.”

4 14. **Numerosity and Ascertainability:** The members of the Class are so numerous that
5 joinder of all members would be impractical, if not impossible. The identities of the members of the
6 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiffs
7 are informed and believe that Defendants violated Sections 201-204, 210, 233, and 246, and the UCL
8 against Plaintiffs and the Class by failing to pay or timely pay all sick pay wages.

9 15. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps to
10 represent fairly and adequately the interests of the Class defined above. Plaintiffs’ attorneys are ready,
11 willing, and able to fully and adequately represent Plaintiffs and the Class. Plaintiffs’ attorneys have
12 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
13 and-hour class actions currently pending in California state and federal courts.

14 16. **Common Question of Law and Fact:** There are predominant common questions of law
15 and fact and a community of interest amongst the claims of Plaintiffs and the Class. Plaintiffs are
16 informed and believe that Defendants uniformly administer a corporate policy and practice of routinely
17 failing to pay or timely pay all sick pay wages.

18 17. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class
19 in that Plaintiffs suffered the alleged harms in a similar and typical manner as other members of the
20 Class suffered. As with other members of the Class, Plaintiffs were paid on an hourly basis as non-
21 exempt employees, earned additional non-discretionary remuneration, and used sick leave. When
22 Plaintiffs used sick leave, sick pay wages were paid at their base rate of pay rather than their regular rate
23 of pay. Plaintiffs thus are members of the Class and have suffered the alleged violations of the Labor
24 Code.

25 18. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
26 in establishing minimum working conditions and requirements in California. These labor standards
27 protect employees from onerous terms and conditions of employment or exploitation by employers who
28 have superior economic and bargaining power.

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

10 20. The prosecution of separate actions by individual members of the Class, even if possible,
11 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
12 members of the Class that would establish potentially incompatible standards of conduct for
13 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
14 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
15 of other members of the Class not parties to the adjudications. Further, the claims of the individual
16 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
17 the concomitant costs and expenses.

18 21. Defendants' pattern, practice, and uniform administration of corporate policy in violation
19 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
20 rights of Plaintiffs and the Class, pursuant to Sections 201-204, 210, 218, 218.5, 218.6, 233, 246, and
21 248.5, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover
22 damages and restitution, including amounts of unpaid sick pay wages and interest thereon, applicable
23 penalties, reasonable attorneys' fees, and costs of suit.

24 22. This action is brought for the benefit of the Class, which is commonly entitled to a
25 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
26 is commonly entitled to restitution of those funds being improperly withheld by Defendant.
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1 **FIRST CAUSE OF ACTION**

2 **Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 210, 233, 246)**

3 **(By Plaintiffs and the Wage Class Against All Defendants)**

4 23. The preceding paragraphs are re-alleged and incorporated by this reference.

5 24. Section 233 provides that an employer must permit an employee to use accrued sick
6 leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
7 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Section
8 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to
9 sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i)
10 "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of
11 pay for the workweek in which the employee uses paid sick time, whether or not the employee actually
12 works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated
13 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
14 hours worked in the full pay periods of the prior 90 days of employment." Under Sections 218 and 233,
15 employees may sue to recover underpaid sick pay wages as damages.

16 25. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and the
17 Class at the incorrect rate of pay. Plaintiffs and the Class regularly use accrued sick leave in workweeks
18 in which they also earn non-discretionary remuneration, including for example shift differential wages.
19 As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and the Class at the base
20 hourly rate of pay, as opposed to the regular rate of pay, which would consider all non-discretionary
21 remuneration in addition to base hourly wages, or the rate resulting from dividing the employee's total
22 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
23 periods of the prior 90 days of employment. As a result, Defendants underpay sick pay wages to
24 Plaintiffs and the Class.

25 26. Section 204 provides that wages generally are due and payable twice during each
26 calendar month and are to be paid no later than the payday for the next regular payroll period.
27 Consistent with Section 204, Section 246 specifically requires that, upon use of accrued sick leave,
28 vested sick pay wages are due and to be paid no later than the payday for the next regular payroll period

1 after accrued sick leave is used as paid sick time. Similarly, Section 201 provides that if an employer
2 discharges an employee, wages earned and unpaid at the time of discharge are due and payable
3 immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than
4 72 hours after an employee quits his or her employment, unless the employee has given 72-hour notice
5 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
6 quitting. The Labor Code penalizes untimely payments. For example, Section 203 provides that if an
7 employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of
8 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
9 wages shall not continue for more than thirty (30) days. Likewise, Section 210 provides penalties for
10 violations of Section 204 and untimely payments during employment. Under Sections 203, 210, and
11 218, employees may sue to recover applicable penalties.

12 27. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
13 sick pay wages and thus do not timely pay Plaintiffs and the Class all owing and underpaid sick pay
14 wages. As a result, Defendants violate Sections 201-204, 210, 233, and 246, among other Labor Code
15 provisions. Plaintiffs are informed and believe that Defendants were advised by skilled lawyers and
16 knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiffs' allegations,
17 especially since the California Supreme Court has explained that "[c]ourts have recognized that 'wages'
18 also include those benefits to which an employee is entitled as a part of his or her compensation,
19 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods.,*
20 *Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay
21 Plaintiffs and the Class all sick pay wages due, Defendants are subject to applicable penalties.

22 28. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
23 entitles Plaintiffs and the Class to underpaid sick pay wages, including interest thereon, applicable
24 penalties, attorneys' fees, and costs of suit.

25 SECOND CAUSE OF ACTION

26 Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)

27 (By Plaintiffs and the Restitution Class Against All Defendants)

28 29. The preceding paragraphs are re-alleged and incorporated by this reference.

1 30. Plaintiffs are informed and believe that at Defendants have engaged and continue to
2 engage in unfair and unlawful business practices in California by utilizing the employment policies and
3 practices alleged herein, including the failures to pay or timely pay all sick pay wages.

4 31. Defendants' utilization of such unfair and unlawful business practices constitutes unfair
5 and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed
6 by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition
7 standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

8 32. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
9 entitles Plaintiffs and the Class to restitution of all sums benefitting Defendants by means of the unfair
10 or unlawful practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

11 **THIRD CAUSE OF ACTION**

12 **Violation of Labor Code §§ 2698 *Et Seq.***

13 **(By Plaintiffs and Aggrieved Employees Against All Defendants)**

14 33. The preceding paragraphs are re-alleged and incorporated by this reference.

15 34. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
16 et seq. ("PAGA"), Plaintiffs brings this cause of action as proxies for the State of California. In this
17 capacity, Plaintiffs seek penalties for Defendants' violations of Sections 201-204, 210, 233, and 246
18 committed since April 6, 2019, against all aggrieved employees. As stated herein, Defendants fail to pay
19 or timely pay all sick pay wages. Under Section 2699(c), Plaintiffs are "aggrieved employees," as one
20 or more of the alleged violations were committed against Plaintiffs as employees of Defendants.

21 35. On or about July 22, 2020, Plaintiff Martin sent written notice to the Labor & Workforce
22 Development Agency ("LWDA") of specific facts and theories for Defendants' Labor Code violations.
23 Martin simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of
24 this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the
25 allegations in the written notice.

26 36. On or about January 19, 2021, Plaintiff Johnson sent written notice to the LWDA of
27 specific facts and theories for Defendants' Labor Code violations. Johnson simultaneously sent written
28

1 notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has
2 neither responded nor indicated that it intends to investigate the allegations in the written notice.

3 37. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable
4 penalties for Defendants' violations against all aggrieved employees for the period described above.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose behalf this
7 suit is brought against Defendants, jointly and severally, as follows:

- 8 1. For an order certifying the proposed Class;
- 9 2. For an order appointing Plaintiffs as the representatives of the Class;
- 10 3. For an order appointing Counsel for Plaintiffs as Class Counsel;
- 11 4. Upon the First Cause of Action for damages, including sick pay wages and interest
12 thereon, penalties, and costs and attorneys' fees, pursuant to Sections 203, 210, 218, 218.5, 218.6, 233,
13 246, and 248.5;
- 14 5. Upon the Second Cause of Action for restitution of all funds acquired by Defendants by
15 any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs and
16 attorneys' fees;
- 17 6. Upon the Third Cause of Action for penalties according to proof and for costs and
18 attorneys' fees, pursuant to Section 2699(a) and (f);
- 19 7. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,
20 218.6, 233, 248.5, and 2699, and Code of Civil Procedure section 1021.5; and
- 21 8. For such other and further relief that the Court may deem just and proper.

22 DATED: February 5, 2021

DIVERSITY LAW GROUP, P.C.

23 By: 
24 _____

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

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

On February 5, 2021, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

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 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s) indicated above or on the attached mailing list. I certify that said electronic transmission was completed and that all pages were received by the party(ies) identified herein or on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 5, 2021, at Los Angeles, California.


Erika Mejía