

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
Mossamat N. Karim (SBN 329711)
nkarim@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

PERCELIA L. FACIO, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

KPC HEALTHCARE, INC., a Nevada
corporation; ORANGE COUNTY GLOBAL
MEDICAL CENTER, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No.: 30-2020-01164635-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

"Assigned for All Purposes
Judge Glenda Sanders

CX-101

1 Plaintiff Percelia L. Facio (“Plaintiff”) on behalf of herself and all others similarly
2 situated, hereby brings this Representative Action against Defendants KPC Healthcare, Inc., a
3 Nevada corporation, Orange County Global Medical Center, Inc., a California corporation, and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all similarly aggrieved employees, hereby brings
8 this representative action for recovery civil penalties under California Labor Code § 2698 *et seq.*
9 This Court has jurisdiction over Defendants because, upon information and belief, Defendants are
10 citizens of California, and/or Defendants have sufficient minimum contacts in California, and/or
11 otherwise intentionally avail themselves to the California market so as to render the exercise of
12 jurisdiction over them by the California courts consistent with the traditional notions of fair play
13 and substantial justice.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Orange. Defendants own, maintain offices, transact business, have an
18 agent or agents within the County of Orange, and/or otherwise are found within the County of
19 Orange, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident, residing in the County of Orange. During the
23 one year immediately preceding Plaintiff’s giving of the required notice under PAGA, and within
24 the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
25 employed by Defendants as a non-exempt employee in the County of Orange.

26 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
27 year preceding Plaintiff’s giving of the required notice under PAGA, and continuing to the
28 present, Defendants did (and continue to do) business within the County of Orange and the State

1 of California by operating medical centers throughout Southern California, and therefore, were
2 (and are) doing business in the County of Orange and the State of California.

3 5. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were licensed to do business in California and the County of Orange and were
5 the employers of Plaintiff and the aggrieved employees (as defined herein).

6 6. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the Defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
10 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
11 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
12 and proximately caused Plaintiff and the aggrieved employees (as defined herein) to be subject
13 to the unlawful employment practices, wrongs, injuries and damages complained of herein.

14 7. At all times herein mentioned, each of said Defendants participated in the doing
15 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
16 Defendants, and each of them, were the agents, servants, and employees of each and every one of
17 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
18 were acting within the course and scope of said agency and employment. Defendants, and each
19 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
20 omissions complained of herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
25 aggrieved employees (as defined herein).

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10. During Plaintiff's employment with Defendants, Defendants utilized a timekeeping system, which upon information and belief, resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, during the relevant time period, including at least the year of 2019, Defendants only paid Plaintiff and other non-exempt employees in increments of 15 minutes, which resulted in these employees not being paid for all hours worked, as this timekeeping mechanism is not even-handed over time. As a result of Defendants' timekeeping policies/practices, Plaintiff and other non-exempt employees were not paid all minimum wages owed to them. Plaintiff and other non-union employees as well as union employees who are paid less than 130% the state minimum wage also did not receive all overtime wages to which they are owed.

4
REPRESENTATIVE ACTION COMPLAINT

1 12. Additionally, Plaintiff and other non-union employees as well as union employees
2 who are paid less than 130% the state minimum wage often worked over 8 and/or 10 hours per
3 workday and/or over 40 hours per workweek, but did not receive overtime compensation equal
4 to one and one-half times their regular rate of pay. Specifically, Defendants paid Plaintiff and
5 other non-exempt employees non-discretionary incentive pay, and/or other forms of pay that are
6 not excludable from an employee's "regular rate" of pay including but not limited to payments
7 denoted in their wage statements as "Extra Shift Bonus", "Shift Night", "Lead Diff", "Hol Diff",
8 and "Bonus" (hereinafter collectively referred to as "Incentive Pay"). However, Defendants failed
9 to properly calculate Plaintiff's and other non-exempt employees' regular rates of pay as a result
10 of their receipt of Incentive Pay, thereby miscalculating and underpaying the overtime wages
11 earned. Furthermore, Defendants frequently paid overtime compensation at a rate below one and
12 one-half times the regular rate of pay, exclusive of any premium or shift differential
13 compensation.

14 13. Additionally, Plaintiff and other non-exempt employees did not receive all
15 required meal periods because Defendants failed to provide a second meal period for shifts
16 worked in excess of 10.0 hours. Further, Plaintiff and other non-exempt employees' first meal
17 periods were often provided after the fifth hour of work. In addition, Defendants required other
18 employees to clock-out for meal periods, but nevertheless remain available to return to duty
19 whenever the psychiatric facility announced an emergency code alert. As a result, these other
20 employees were not actually relieved of all duties during their purported meal periods and were
21 therefore underpaid minimum and overtime wages earned. *See Kaanaana, et al. v. Barrett*
22 *Business Services, Inc., et al.*, 29 Cal. App. 5th 778, 808 (2018) (finding that time worked during
23 meal periods results in liability for both "premium pay for the meal period violation and payment
24 of minimum wages for all time worked.") Despite Defendants' failure to provide Plaintiff and
25 other non-exempt employees with all lawful meal periods to which they were entitled, Defendants
26 failed to compensate its employees with the required meal period premium at their respective
27 regular rates of pay for each workday in which they experienced a meal period violation as
28 mandated by Labor Code § 226.7.

1 14. Defendants also failed to authorize and permit Plaintiff and other non-exempt
2 employees to take all duty-free 10-minute rest periods for every four hours worked, or major
3 fraction thereof, due to Defendants' unlawful rest period policies/practices. Specifically,
4 Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take a
5 third rest period on occasions when they worked shifts in excess of 10.0 hours. Additionally,
6 Defendants' work demands and failure to provide adequate staff coverage frequently prevented
7 Plaintiff and other non-exempt employees from taking all their rest periods. Defendants also
8 required other employees to keep their dispatch radios with them at all times, including during
9 rest periods, in violation of *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 260
10 (holding that during rest periods "employees must not only be relieved of work duties, but also
11 be freed from employer control over how they spend their time."). Despite Defendants' failure to
12 authorize and permit Plaintiff and other non-exempt employees to take all legally-compliant rest
13 periods to which they are entitled, Defendants failed to compensate Plaintiff and other non-
14 exempt employees with an additional hour of premium pay at their respective regular rates of pay
15 for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

16 15. Upon information and belief, during at least a portion of the relevant time period,
17 Defendants maintained no payroll code or other mechanism for the payment of meal and/or rest
18 period premium payments under Labor Code § 226.7.

19 16. As a result of Defendants failure to pay all minimum wages, overtime wages, and
20 meal and rest period premium wages, Defendants maintained inaccurate payroll records and
21 issued inaccurate wage statements in violation of Labor Code § 226. Defendants also issued
22 facially deficient wage statements that failed to include the number of hours and the
23 corresponding rates of pay for all overtime compensation, and inaccurately reported the number
24 of hours worked as a result of Defendants' time-rounding policies and practices.

25 17. Further, as a result of Defendants' failure to compensate its non-exempt employees
26 for all wages owed and meal period premiums, Defendants also failed to pay all final wages owed
27 to former employees upon their respective separations of employment.
28

18. Pursuant to the California Emergency Rules Related to COVID-19, the statute of limitations for the causes of action alleged in this lawsuit were tolled as of April 6, 2020. *See* Emergency Rule 9(a) (“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”)

19. Based on the foregoing, Plaintiff seeks to represent herself and all other aggrieved employees, as defined by Labor Code § 2699(c), which includes all of Defendants' non-exempt employees who worked for Defendants in California at any time between April 6, 2019 and the present.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACTION

(AGAINST ALL DEFENDANTS)

20. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

21. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code section 2698, *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code section 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code section 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code section 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code section 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations

of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code sections 1182.12, 1194, 1194.2, and 1197;
- b. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code sections 204, 510, 558, 1194, and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees all legally required meal periods, and failure to pay meal period premium wages, to at the regular rate of compensation in violation of Labor Code sections 226.7, 512, and 558;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation for rest period violations in violation of Labor Code sections 226.7, 516, 558;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements in violation of Labor Code section 226, *et seq.*; and
- f. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code section 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code sections 558 and 1174; and
- h. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees upon their separation of employment in violation of Labor Code sections 201-203.

22. On August 7, 2020, Plaintiff notified Defendant KPC Healthcare, Inc. and Orange County Global Medical Center, Inc., a California corporation, via certified mail, and the LWDA via e-mail of Defendants' alleged California Labor Code violations and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to those violations identified herein. Now that sixty-five (65) days have passed from Plaintiff notifying

1 Defendants of these violations, Plaintiff has exhausted her administrative requirements for
2 bringing a claim under PAGA with respect to these violations.

3 23. Based on the foregoing, Plaintiff seeks to represent herself and all aggrieved
4 employees, as defined by Labor Code section 2699(c), which includes all of Defendants' non-
5 exempt employees who worked for Defendants in California at any time between April 6, 2019
6 and the present.

7 24. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect her interests and the interests of other aggrieved employees, and to assess and collect the
9 civil penalties owed by Defendants. Plaintiff have thereby incurred attorneys' fees and costs,
10 which she is entitled to receive under California Labor Code section 2699.

11 **PRAYER**

12 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
13 this suit is brought against Defendants, jointly and severally, as follows:

14 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
15 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
16 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
17 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
18 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
19 unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
20 violation pursuant to Labor Code § 558 per employee per pay period, plus an amount sufficient
21 to recover the unpaid wages owed to each aggrieved employee; (3) \$100.00 for each initial
22 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
23 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
24 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
25 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
26 those violations of the Labor Code for which no civil penalty is specifically provided, based on
27 the violations of Labor Code sections cited in Paragraph 21 (a)-(h) above.;

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699(g), and Code of Civil Procedure § 1021.5; and

3. For such other and further relief, the Court may deem just and proper.

Dated: October 13, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff