

1 Alex Asil Mashiri, Esq. (SBN 283798)
alex@mashirilawfirm.com
2 **MASHIRI LAW FIRM**
A Professional Corporation
3 11251 Rancho Carmel Drive #500694
San Diego, CA 92150
4 Tel: (858) 348-4938
Fax: (858) 348-4939
5

6 Tamim Jami, Esq. (SBN 311351)
tamim@jamilaw.com
7 **THE JAMI LAW FIRM P.C.**
3525 Del Mar Heights Rd #941
8 San Diego, CA 92130
Tel: (858) 284-0248
9 Fax: (858) 284-0977

10 Attorneys for Plaintiff
11 ANA WOOD

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO**

14 ANA WOOD, an individual, for the real
15 party in interest, the State of California,

16 Plaintiff,

17 vs.

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19 KAISER FOUNDATION HOSPITALS;
20 and DOES 1 through 50;

21 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/03/2021 at 08:45:34 PM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

Case No. 37-2021-00005146-CU-OE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF
THE PRIVATE ATTORNEYS
GENERAL ACT (Labor Code Section
2698 et seq.)**

1 Plaintiff ANA WOOD (“Plaintiff”), in her capacity as the State of California’s
2 designated proxy under the Private Attorneys General Act, and on behalf of other current
3 and former California employees (“Represented Employees”) alleges the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor
6 Code sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against
7 Defendant KAISER FOUNDATION HOSPITALS (“KAISER”), and DOES 1 through 50
8 (all defendants are hereinafter collectively referred to as “Defendants”) for wage and hour
9 violations of the California Labor Code and the applicable Industrial Welfare Commission
10 Wage Order (the “IWC Wage Order”).

11 2. Pursuant to Labor Code section 2699, any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce
13 Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards,
14 agencies or employees for violation of the code may, as an alternative, be recovered through
15 a civil action brought by an aggrieved employee on behalf of himself or herself and other
16 current or former employees pursuant to the procedures specified in Labor Code section
17 2699.3.

18 3. By this action, Plaintiff, who is an aggrieved employee, seeks civil penalties on
19 behalf of the state, who is the real party in interest.

20 4. Through this representative action, Plaintiff seeks to recover civil penalties
21 under the PAGA. No class certification is required. (*Arias v. Superior Court* (2009) 46
22 Cal.4th 969.)

23 **JURISDICTION AND VENUE**

24 5. Pursuant to Article VI, section 10 of the California Constitution, subject matter
25 jurisdiction is proper in the Superior Court of California, County of San Diego, State of
26 California because Plaintiff alleges claims arising under California law.

27 6. This Court has jurisdiction over Defendants because each is believed to be an
28 association, corporation, business entity, or individual that conducts substantial business in

1 the State of California, County of San Diego.

2 7. This Court has jurisdiction over Plaintiff's claims for civil penalties under
3 PAGA.

4 8. Pursuant to California Code of Civil Procedure section 395, venue is proper in
5 the Superior Court of California for the County of San Diego because this is where Plaintiff
6 was employed and where the wrongful misconduct alleged herein occurred.

7 **THE PARTIES**

8 9. The State of California is the real party in interest in a PAGA action. (*Kim v.*
9 *Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 81. [The "government entity on whose
10 behalf the plaintiff files suit is always the real party in interest."].)

11 10. Plaintiff is an "aggrieved employee" because she was employed by Defendants
12 and had one or more of the alleged violations committed against her, and therefore is
13 properly suited to act on behalf the state, and collect civil penalties for all violations
14 committed against the Represented Employees, who are also aggrieved employees as
15 defined by subdivision (c) of Labor Code section 2699.

16 11. Defendants do business in the County of San Diego, State of California.

17 12. The true names and capacities, whether individual, corporate, associate or
18 otherwise of the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at
19 this time. Plaintiff therefore sues said Defendants by such fictitious names pursuant to
20 California Code of Civil Procedure section 474. Plaintiff will seek leave to amend the
21 operative complaint ("Complaint") to allege the true names and capacities of DOES 1
22 through 50 when their names are ascertained. Plaintiff is informed and believes, and based
23 thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiff for the
24 events and actions alleged herein.

25 13. Plaintiff is informed and believes, and based thereon allege, that at all times,
26 each defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego
27 for each of the other defendants and each were co-conspirators with respect to the acts and
28 the wrongful conduct alleged herein so that each is responsible for the acts of the other in

1 connection with the conspiracy and in proximate connection with the other defendants.

2 14. Plaintiff is informed and believes, and based thereon alleges, that each
3 Defendant was acting partly within and partly without the scope and course of their
4 employment, and was acting with the knowledge, permission, consent, and ratification of
5 every other Defendant.

6 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

7 15. Defendants are the owners and operators of numerous hospitals and medical
8 facilities throughout California.

9 16. Plaintiff worked for Defendants during which time she was paid hourly and
10 considered non-exempt.

11 **PAGA REPRESENTATIVE ACTION CLAIMS**

12 17. On information and belief, current and former employees of Defendants were
13 subject to wage and hour violations by Defendants, specifically by Defendants' violations of
14 Labor Code sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.3, 226.7, 227.3, 233,
15 234, 246, 248.5, 510, 1194, 1197, 1197.1, 1198, 2698, and 2699 et seq.

16 18. California law provides that an aggrieved employee may file an action under
17 the PAGA against an employer for penalties in connection with violations of the Labor Code
18 and Wage Order.

19 19. At all material times, Defendants were and/or are Represented Employees'
20 employers or persons acting on behalf of Represented Employees' employer, within the
21 meaning of California Labor Code sections 558 and 558.1.

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 20. On November 27, 2020, Plaintiff, via counsel, sent the statutorily required
24 notice to the LWDA, indicating that Plaintiff intends to pursue claims against Defendants for
25 violations of the Labor Code.

26 21. On November 27, 2020, Plaintiff, via counsel, sent a copy of the November
27 27, 2020 notice to Defendant KAISER.

28 22. The statutory period expired since Plaintiff sent the November 27, 2020 notice

1 to the LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume
2 jurisdiction over the applicable penalty claims and did not provide notice as set forth in
3 Labor Code section 2699.3(a)(2)(A).

4 23. Therefore, Plaintiff has exhausted the administrative requirements under the
5 PAGA.

6 24. The Causes of Action alleged in this Complaint are appropriately suited for a
7 Representative Action under the PAGA because:

- 8 a. Their action involves allegations of violations of provisions of the
9 California Labor Code that provide for a civil penalty to be assessed and
10 collected by the LWDA or any departments, divisions, commissions,
11 boards, agencies or employees;
- 12 b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by
13 the alleged violator and had one or more of the alleged violations
14 committed against him; and
- 15 c. Plaintiff has satisfied the procedural requirements of Labor Code section
16 2699.3, as set forth above.

17 25. As a result of the acts alleged above, Plaintiff seeks to recover civil penalties
18 under the PAGA for violations of the following Labor Code provisions.

- 19 a. failure to provide accurate sick pay in violation of Labor Code sections
20 246;
- 21 b. denying employees the right to use sick days in violation of Labor Code
22 sections 233 and 234; and
- 23 c. failure pay all vacation hours in violation of Labor Code sections 227.3.

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FIRST CAUSE OF ACTION
(Representative Claims for Penalties Under PAGA for Violation of Labor Code Sections 246 against all Defendants)

26. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

27. Under Labor Code section 246, employers in California must provide employees with paid sick leave.

28. Plaintiff was entitled to paid sick leave.

29. Upon information and belief, Defendants failed to properly provide Plaintiff and the Represented Employees with paid sick leave, including paying sick leave at the correct rate, as mandated by Labor Code section 246(1)(1)-(3).

30. By way of example, Defendants failed to compensate sick leave at the correct rate of pay under Labor Code section 246(1) because they failed to account for all compensation earned including, but not limited to, incentives, shift differentials, nondiscretionary bonuses, billing program earnings, benefit flex credit earnings, etc.

31. By way of another example, Defendants failed to compensate sick leave at the correct rate of pay under Labor Code section 246(1) because they included, in their calculation, hours that are not considered “hours worked” under California law.

32. Upon information and belief, Defendants failed to provide Represented Employees with the appropriate blended rate of pay for sick leave use.

33. Upon information and belief, Defendants failed to provide Represented Employees with the appropriate accrual of sick leave hours on a per pay period basis which resulted in a violation of sections 246. Upon information and belief, Defendants would provide Represented Employees with an accrual rate less than what they are entitled to under the Healthy Workplace, Healthy Families Act of 2014 codified under section 245 et seq., including, but not limited to, Labor Code section 246.

34. PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 246 and for failing to pay employees all wages earned, due and owed.

35. Labor Code section 2699(f) imposes upon Defendants, and each of them,

1 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial
2 violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for
3 subsequent violations for all Labor Code provisions for which a civil penalty is not
4 specifically provided.

5 36. Pursuant to Labor Code section 248.5, Plaintiff seeks to recover the relief
6 available under Labor Code section 248.5 on behalf of herself and the Represented
7 Employees as alleged herein in an amount to be shown according to proof.

8 37. Plaintiff is seeking penalties against Defendants under Labor Code sections
9 2699(f), 248.5, 1197.1, and/or any other applicable statute allowing recovery of penalties
10 under PAGA on behalf of herself and the Represented Employees as alleged herein in an
11 amount to be shown according to proof.

12 38. Pursuant to Labor Code section 248.5, Plaintiff seeks to recover attorney's
13 fees, costs, civil penalties, and equitable, injunctive, or restitutionary relief on behalf of
14 herself and the Represented Employees as alleged herein in an amount to be shown
15 according to proof.

16 39. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
17 attorney's fees, costs, filing fees paid to the LWDA and civil penalties on behalf of herself
18 and the Represented Employees as alleged herein in an amount to be shown according to
19 proof.

20 **SECOND CAUSE OF ACTION**
21 **(Representative Claims for Penalties Under PAGA for Violation of Labor Code**
22 **Sections 233 and 234 against all Defendants)**

23 40. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
24 though set forth herein.

25 41. Under Labor Code section 233, "[a]n employer shall not deny an employee the
26 right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner
27 discriminate against an employee for using, or attempting to exercise the right to use, sick
28 leave to attend to an illness or the preventive care of a family member, or for any other
reason specified in subdivision (a) of Section 246.5."

1 42. “An employer absence control policy that counts sick leave taken pursuant to
2 Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or
3 suspension is a per se violation of Section 233. An employee working under this policy is
4 entitled to appropriate legal and equitable relief pursuant to Section 233.”

5 43. Upon information and belief, Defendants had a policy to discharge, threaten to
6 discharge, demote, suspend, and discriminate against their employees for using, or
7 attempting to exercise the right to use, sick leave to attend to an illness or the preventive care
8 of a family member, or for any other reason specified in subdivision (a) of Section 246.5.

9 44. Defendants would not permit Plaintiff and the Represented Employees to use
10 their sick leave for the purposes enumerated in Labor Code section 246.5, in violation of
11 Labor Code sections 233 and 234. Indeed, upon information and belief, Defendants would
12 deduct sick leave hours from the vacation hours instead of their available sick leave hours, in
13 violation of Labor Code sections 233, 234, and 246, and also fail to pay them for such sick
14 leave at the higher statutory blended rate.

15 45. Plaintiff and Represented Employees seek to recover from Defendants, and
16 each of them civil penalties, and attorney’s fees and costs pursuant to Labor Code sections
17 233 and 234.

18 46. Plaintiff is seeking penalties against Defendants under Labor Code sections
19 2699(f), and/or any other applicable statute allowing recovery of penalties under PAGA on
20 behalf of herself and the Represented Employees as alleged herein in an amount to be shown
21 according to proof.

22 47. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
23 attorney’s fees, costs, filing fees paid to the LWDA and civil penalties on behalf of herself
24 and the Represented Employees as alleged herein in an amount to be shown according to
25 proof.

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THIRD CAUSE OF ACTION
(Representative Claims for Penalties Under PAGA for Violation of Labor Code Section 227.3 against all Defendants)

48. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

49. Under Labor Code section 227.3, “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served [...].”

50. Defendants violated Labor Code section 227.3. By way of one example, Defendants would unlawfully deduct sick leave hours from Plaintiff and the Represented Employees’ vacation hours, in violation of Labor Code section 227.3, and 246 as alleged above. As a result of such conduct, Plaintiff and the Represented Employees did not receive all of their vested vacation hours upon cessation from employment.

51. PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 227.3.

52. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

53. Plaintiff is seeking penalties against Defendants under Labor Code section 2699(f) and/or any other applicable statute allowing recovery of penalties under PAGA on behalf of herself and the Represented Employees as alleged herein in an amount to be shown according to proof.

54. Pursuant to PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney’s fees, costs, filing fees paid to the LWDA, and civil penalties on behalf of herself and the Represented Employees in an amount to be shown according to proof.

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