

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Monica Bachner

1 Raymond P. Boucher, State Bar No. 115364
ray@boucher.la
2 Shehnaz M. Bhujwala, State Bar No. 223484
bhujwala@boucher.la
3 Alexander Gamez, State Bar No. 309708
gamez@boucher.la
4 BOUCHER LLP
21600 Oxnard Street, Suite 600
5 Woodland Hills, California 91367-4903
Tel: (818) 340-5400
6 Fax: (818) 340-5401

7 Sahag Majarian II, State Bar No. 146621
sahagii@aol.com
8 LAW OFFICES OF SAHAG MAJARIAN II
18250 Ventura Boulevard
9 Tarzana, California 91356
Tel: (818) 609-0807
10 Fax: (818) 609-0892

11 *Attorneys for Plaintiff Michelle Kahn, an*
12 *Aggrieved Employee of Defendants, for the State*
13 *of California's Labor and Workforce*
Development Agency on Behalf of All Aggrieved
Employees of Defendants

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16
17 MICHELLE KAHN, Aggrieved Employee of
Defendants, on Behalf of the State of
18 California's Labor and Workforce
Development Agency for All Aggrieved
19 Employees of Defendants,

20 Plaintiff,

21 v.

22
23 EMANATE HEALTH, a California
Corporation; and DOES 1-100, Inclusive,
24

25 Defendants.
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27
28

Case No. **21STCV12947**

REPRESENTATIVE ACTION

COMPLAINT FOR:

**VIOLATION OF CALIFORNIA'S LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE §§ 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

1 Plaintiff MICHELLE KAHN (hereinafter, “Plaintiff”), who is an aggrieved employee of
2 Defendant EMANATE HEALTH, and DOES 1 through 100, inclusive, (collectively,
3 “Defendants”), brings this representative action as proxy for the State of California’s Labor and
4 Workforce Development Agency (“LWDA”) on behalf of all current and former aggrieved
5 employees of Defendants in California, and hereby alleges the following facts and claims against
6 Defendants, and respectfully request civil penalties, all other available relief, and a trial by jury of
7 all issues and causes of action so triable.

8 **INTRODUCTION**

9 1. Plaintiff brings this representative action as the proxy for the State of California’s
10 LWDA against Defendants for civil penalties pursuant to California’s Private Attorneys General
11 Act of 2004 (hereinafter, the “PAGA”), Labor Code section 2698, *et seq.*, resulting from
12 Defendants’ violations of “wage and hour” laws protective of Defendants’ aggrieved employees
13 under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders.
14 The PAGA permits an aggrieved employee to bring a representative action as the State’s
15 designated proxy on behalf of herself and all other current and former non-exempt aggrieved
16 employees of an employer to recover civil penalties for violation of California’s Labor Code.

17 2. Defendants’ systemic pattern of Labor Code and IWC Wage Order violations
18 toward Plaintiff and other current and former aggrieved employees of Defendants in California
19 include, but are not limited to its:

20 a. Failure to pay all wages owed for time worked in violation of Labor Code
21 sections 204, 223, 1194, 1197, 1198, and 1199 and Section 4 of the applicable IWC Wage
22 Order(s);

23 b. Failure to pay all overtime compensation in violation of Labor Code section
24 510 and Section 3 of the applicable IWC Wage Order(s);

25 c. Failure to furnish accurate itemized wage statements in violation of Labor
26 Code section 226(a) and 226.3; and

27 d. Failure to timely pay all final wages owed upon separation of employment
28 in violation of Labor Code sections 201, 202, and 203.

3. Pursuant to the PAGA, Plaintiff brings this representative action as proxy of the LWDA against Defendants, on behalf of herself and all other aggrieved employees of Defendants in California, seeking to recover civil penalties, costs and attorney's fees, and all other available relief for Defendants' violations of the Labor Code, as alleged herein.

PARTIES

4. Plaintiff MICHELLE KAHN is an individual over the age of eighteen (18). Plaintiff and at all relevant times mentioned in this Complaint, was a California citizen residing within San Bernardino County, California. Plaintiff currently resides in the County of San Bernardino. Plaintiff was employed by Defendants in California as a non-exempt Publication Communication Operator, Clerical Assistant and most recently as Revenue Integrity Assistant at the Emanate Health Foothill Presbyterian Hospital from approximately March 19, 2014 through September 10, 2020, the date her employment ended. At all relevant times herein, Plaintiff was an “employee” as that term is used in the Labor Code. During the applicable statutory period, Plaintiff was subject to various policies, procedures, and practices implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code and IWC Wage Orders. At all relevant times, Plaintiff was and is an aggrieved employee of Defendants within the meaning of Labor Code section 2699(c).

5. Defendant EMANATE HEALTH is a California corporation headquartered in Covina, California. Defendant EMANATE HEALTH is composed of multiple health care facilities throughout Los Angeles County in California.¹ On information and belief, Defendant EMANATE HEALTH maintains Emanate Health Foothill Presbyterian Hospital located at 250 S Grand Ave, Glendora, CA 91741 and regularly conducts business within Los Angeles County, California. On Information and belief, Defendant EMANATE HEALTH employs over 429 individuals in California.² Defendant EMANATE HEALTH is an “employer” regularly employing California residents and is subject to the Labor Code and IWC Wage Orders.

¹ See, <https://www.emanatehealth.org/>

² See, <https://www.linkedin.com/company/emanatehealth/>.

6. Defendants named DOES 1 through 100, inclusive, are on information and belief now, and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in California, including Los Angeles County, and each of the fictitiously named Defendants is responsible for the conduct alleged in this Complaint. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 100, inclusive, and for that reason, DOES 1 through 100, inclusive, are sued under such fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff will seek leave of court to amend their Complaint to allege both the true names and capacities of the DOE Defendants when ascertained.

7. Defendants EMANATE HEALTH and DOES 1 through 100, inclusive, were Plaintiff's and other current and former aggrieved employees' employers or persons acting on behalf of their employer, within the meaning of California Labor Code section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Wage Order of the IWC, and are subject to civil penalties as set forth in Labor Code section 2698, *et seq.*

8. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein. Plaintiff is informed and believe and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

9. The California Superior Court has jurisdiction in this matter pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statutes under which this action is brought do not specify any other specific basis for jurisdiction.

10. The California Superior Court also has jurisdiction in this matter because both the

1 individual and aggregate civil penalties sought herein under California state law exceed the
2 minimal jurisdictional limits of the Superior Court and will be established at trial, according to
3 proof.

4 11. The California Superior Court also has jurisdiction over Defendants because they
5 are corporations and/or entities and/or persons with sufficient minimum contacts in California, are
6 citizens of California, or otherwise intentionally availed themselves of the California market so as
7 to render the exercise of jurisdiction over them by the California courts consistent with traditional
8 notions of fair play and substantial justice. There is no federal question at issue as the issues herein
9 are based solely on California statutes and law, including the Labor Code. Thus, this Court
10 maintains appropriate jurisdiction to hear this matter.

11 12. Venue is proper in the Superior Court of California for the County of Los Angeles,
12 pursuant to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in
13 that liability arose in Los Angeles County because at least some of the acts and omissions that are
14 the subject matter of this Complaint occurred therein and/or each Defendant either is found,
15 maintains offices, transacts business, exists, and/or has an agent in Los Angeles County.

16 **FACTUAL ALLEGATIONS**

17 13. During the applicable statutory period, Defendants employed Plaintiff as a
18 Publication Communication Operator, Clerical Assistant and most recently as Revenue Integrity
19 Assistant at the Emanate Health Foothill Presbyterian Hospital from approximately March 19,
20 2014 through September 10, 2020, the date her employment ended.

21 14. During the applicable statutory period, Defendants failed to compensate Plaintiff
22 for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours
23 in a week due to Defendants' policy and practice of rounding the time worked by non-exempt
24 employees in Defendants' favor such that Plaintiff was not paid for all time actually worked. Also,
25 starting in March of 2020, Plaintiff was requested to arrive to Defendants' facilities in advance of
26 her scheduled start times to undergo temperature checks and sanitize at the main hospital entrance.
27 This required process resulted in Plaintiff waiting an additional 3 to 5 minutes to clock in for her
28 shifts, without payment.

15. During the applicable statutory period, Defendants failed to provide Plaintiff with accurate itemized wage statements. For example, Plaintiff's wage statements do not accurately show the total hours worked and all rates of pay. Specifically, on Plaintiff's 6/18/20 wage statement, although there are 16 hours stated for "Flexdown", there is no corresponding rate or earnings nor are the total hours included, thereby creating confusion for the employee to calculate the total hours worked. Moreover, the wage statements fail to identify, among other things, the correct amount of gross and net wages earned, and the correct number of and the correct amount of deductions.

16. During the applicable statutory period, Defendants willfully failed to pay all wages owed to Plaintiff upon separation of employment. Defendants still have yet to pay Plaintiff all final wages owed to her due to their failure to pay Plaintiff for all minimum wages and overtime compensation owed.

GENERAL ALLEGATIONS

17. Plaintiff and all other aggrieved employees are current and former non-exempt employees of Defendants that work or worked at or out of Defendants' facilities in California as non-exempt employees during the statutory period.

18. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and all other current and former aggrieved employees were subject to the same various policies, procedures, and practices implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code.

19. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy and/or practice, Defendants failed to pay Plaintiff and all other aggrieved employees for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a week due to Defendants' policy and practice of rounding the time worked by aggrieved employees in Defendants' favor such that Plaintiff and aggrieved employees were not paid for all time actually worked. Also, starting in March of 2020, Plaintiff and aggrieved employees were requested to arrive to Defendants' facilities in advance of their scheduled start times to undergo temperature checks and sanitize at the main hospital entrance. This required process resulted in Plaintiff and

1 aggrieved employees waiting an additional 3 to 5 minutes to clock in for their shifts, without
2 payment.

3 20. Plaintiff is informed and believes, and thereon alleges, that Defendants maintain a
4 policy or practice that fails to furnish Plaintiff and all other aggrieved employees with accurate
5 itemized wage statements. For example, Plaintiff and aggrieved employees' wage statements do
6 not accurately show the total hours worked and all rates of pay. Specifically, on Plaintiff's 6/18/20
7 wage statement, although there are 16 hours stated for "Flexdown", there is no corresponding rate
8 or earnings nor are the total hours included, thereby creating confusion for the employee to
9 calculate the total hours worked. Moreover, the wage statements fail to identify, among other
10 things, the correct amount of gross and net wages earned, and the correct number of and the
11 correct amount of deductions.

12 21. Plaintiff is informed and believes, and thereon alleges, that Defendants maintain a
13 policy or practice that willfully failed and continue to fail to timely pay Plaintiff and aggrieved
14 employees all wages owed upon separation of employment, and that by virtue of failing to pay all
15 minimum wages and overtime compensation owed, Plaintiff and aggrieved employees were not
16 timely paid all wages owed upon separation of their employment with Defendants.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

19 **(California Labor Code §§ 2698, *et seq.*)**

20 22. Plaintiff incorporates by reference and realleges each and every one of the
21 allegations contained in the preceding and foregoing paragraphs of this complaint, as though fully
22 set forth herein.

23 23. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover all
24 applicable civil penalties, reasonable attorneys' fees and costs, and all other available relief
25 permitted under the PAGA through a representative action on behalf of the State of California's
26 LWDA for all aggrieved employees, including herself, that work or worked for Defendants during
27 the relevant time period.

28 24. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a representative

1 action is not subject to the formalities required of a class action and class certification of PAGA
2 claims is not required.

3 25. Plaintiff is an “aggrieved employee” of Defendants within the meaning of Labor
4 Code section 2699(c) because she was employed by Defendants during the applicable statutory
5 period and suffered one or more of the Labor Code violations, as alleged herein.

6 26. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
7 penalties recovered by aggrieved employees shall be distributed to the LWDA for enforcement of
8 labor laws and education of employers and employees about their rights and responsibilities under
9 the Labor Code, and twenty-five percent (25%) shall be distributed to the aggrieved employees.

10 27. Plaintiff’s representative action alleges violations of certain Labor Code sections
11 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)
12 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

13 28. On January 27, 2021, Plaintiff complied with Labor Code section 2699.3(a) by
14 electronically filing written notice with the LWDA regarding the specific provisions of the Labor
15 Code alleged to have been violated by Defendants and Plaintiff intent to pursue civil penalties
16 against Defendants on behalf of herself and all other aggrieved employees pursuant to PAGA.
17 Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiff’s notice letter. Plaintiff also
18 paid the filing fee to the LWDA.

19 29. Labor Code section 2699.3(a) provides in pertinent part that: “The agency shall
20 notify the employer and the aggrieved employee or representative by certified mail that it does not
21 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
22 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
23 of the postmark date of the notice given... the aggrieved employee may commence a civil action
24 pursuant to Section 2699.” Sixty-five calendar days have passed since Plaintiff served notice upon
25 the LWDA, and the LWDA did not provide notice of its intent to investigate Plaintiff’s claims.
26 Accordingly, Plaintiff exhausted her obligation to provide administrative notice and is authorized
27 to commence this representative action seeking civil penalties on behalf of all aggrieved
28 employees of Defendants.

1 30. On February 8, 2021, Plaintiff amended her prior January 27, 2021 correspondence
2 to put Defendant on notice that, in addition to the PAGA penalties sought for the underlying Labor
3 Code violations previously alleged, including the alleged violations of Labor Code section 226(a),
4 she will also be seeking penalties as proxy of the LWDA against Defendant for its alleged failure
5 to furnish complete and accurate itemized wage statements (Lab. Code § 226(a)) for additional
6 factual bases not previously alleged. Attached hereto as **Exhibit 2** is a true and correct copy of
7 Plaintiff's amended notice letter that was electronically filed with the LWDA and sent to
8 Defendant via certified mail.

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

15 32. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
16 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
17 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
18 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
19 subsequent violation.

20 33. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of the State of
21 California's LWDA for all aggrieved employees of Defendants, including herself, seeks applicable
22 civil penalties for violations of Labor Codes 201, 202, 203, 204, 223, 226.3, 510, 1194, 1197, and
23 1198 during the statutory period, as set forth below:

24 a. For violations of Labor Code sections 201, 202, 203, 510, 1194, 1197 and
25 1198, Labor Code section 2699(f)(2) imposes a civil penalty of one hundred dollars (\$100) for
26 each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200)
27 for each aggrieved employee per pay period for each subsequent violation;

28 b. For violations of Labor Code section 204, Labor Code section 210 imposes

1 a civil penalty of one hundred dollars (\$100) for each aggrieved employee for each initial violation
2 that was neither willful nor intentional, and two hundred dollars (\$200) for each aggrieved
3 employee, for each subsequent violation, regardless of whether the subsequent violation was
4 willful or intentional;

5 c. For violations of Labor Code section 226(a), Labor Code section 226.3
6 imposes a civil penalty, in addition to any other penalty provided by law, of two hundred fifty
7 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
8 per aggrieved employee for each subsequent violation.

9 34. Defendants violated Labor Code sections 510, 1194, 1197, and 1198 by not paying
10 Plaintiff and aggrieved employees all wages owed for all hours worked for each pay period as a
11 result of Defendants' policy or practice of rounding the time worked by non-exempt employees in
12 Defendants' favor such that Plaintiff and other non-exempt employees were not paid for all time
13 actually worked. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a
14 civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the
15 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
16 each subsequent violation.

17 35. Defendants violated Labor Code section 226(a) by failing to provide Plaintiff and
18 aggrieved employees of Defendants with accurate itemized wage statements correctly identifying,
19 among other things, the total hours worked and all rates of pay, the correct amount of gross wages
20 earned, the correct amount of net wages earned, and the correct amount of deductions that were
21 paid or should have been paid. Thus, pursuant to Labor Code sections 226.3 and 2699(a),
22 Defendants, in addition to, and entirely independent and apart from any other penalty, are subject
23 to a civil penalty for violation Labor Code section 226(a) in the amount of two hundred and fifty
24 dollars (\$250) per aggrieved employee per violation in an initial citation and one thousand dollars
25 (\$1,000) per aggrieved employee for each violation in a subsequent citation.

26 36. Defendants violated Labor Code sections 201, 202, and 203 by willfully failing to
27 provide Plaintiff and all other aggrieved employees of Defendants all wages owed upon separation
28 of employment by failing to pay all minimum wages and overtime compensation owed. Thus,

1 pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one
2 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of
3 these sections, and two hundred dollars (\$200) for each aggrieved employee per pay period for
4 each subsequent violation.

5 37. At all material times, Defendants were Plaintiff and aggrieved employees’
6 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
7 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision
8 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
9 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
10 penalties provided for under Labor Code section 558 are in addition to any other civil penalty
11 provided by law.

12 38. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
13 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
14 subsequent violation of Labor Code sections 510 and 1194 for each pay period for which Plaintiff
15 and all other aggrieved employees of Defendants were not paid all wages owed as a result of
16 Defendants’ failure to pay wages and overtime compensation owed, as alleged herein.

17 39. Defendants violated Labor Code section 1198 by failing to comply with the
18 maximum hours of work and the standards conditions of labor fixed by the IWC under the “Hours
19 and Days of Work”, “Minimum Wages” and “Record” sections of the applicable IWC Wage
20 Order, by failing to pay all minimum wage and overtime compensation, failing to keep and
21 provide accurate records, and failing to timely pay owed wages upon separation of employment, as
22 alleged herein. Thus pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
23 penalty in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period
24 for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay
25 period for each subsequent violation.

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DATED: April 5, 2021

Respectfully submitted,

BOUCHER LLP

By:


RAYMOND P. BOUCHER
SHEHNAZ M. BHUJWALA
ALEXANDER GAMEZ

LAW OFFICES OF SAHAG MAJARIAN II

SAHAG MAJARIAN II

*Attorneys for Plaintiff Michelle Kahn, an
Aggrieved Employee of Defendants, for the State
of California's Labor and Workforce Development
Agency on Behalf of All Aggrieved Employees of
Defendants*

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DATED: April 5, 2021

BOUCHER LLP

RAYMOND P. BOUCHER
SHEHNAZ M. BHUIWALA
ALEXANDER GAMEZ

SAHAG MAJARIAN II

*Attorneys for Plaintiff Michelle Kahn, an
Aggrieved Employee of Defendants, for the State
of California's Labor and Workforce Development
Agency on Behalf of All Aggrieved Employees of
Defendants*

Exhibit 1

BOUCHER LLP

21600 Oxnard Street, Suite 600
Woodland Hills, California 91367

Telephone 818.340.5400
Facsimile 818.340.5401

January 27, 2021

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Emanate Health
c/o Agent for Service of Process
Attn: Robert H. Curry
140 W. College St.
Covina, California 91722

Re: *Michelle Kahn v. Emanate Health, et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 (“PAGA” or “the Act”) (Lab. Code § 2698 *et seq.*), this letter shall serve as written notice of claims for civil penalties that will be pursued by Ms. Michelle Kahn as proxy for the Labor and Workforce Development Agency on behalf of all non-exempt aggrieved employees employed by Emanate Health in California during the statutory period, against Emanate Health.

Emanate Health is composed of multiple health care facilities throughout Los Angeles County in California. Emanate Health employed Ms. Kahn from approximately 2014 to September 10, 2020 in multiple roles such as Publication Communication Operator, Clerical Assistant and most recently as Revenue Integrity Assistant at the Emanate Health Foothill Presbyterian Hospital located at 250 S Grand Ave, Glendora, CA 91741. Pursuant to California law, Emanate Health was at all relevant times Ms. Kahn’s employer during the statutory period.

In her representative action, Ms. Kahn will seek civil penalties pursuant to PAGA as a result of Emanate Health’s failure to: (1) compensate for all hours worked (Lab. Code §§ 204, 223, 1194, 1197, 1198); (2) compensate for all overtime hours worked (Lab. Code § 510); (3) furnish

complete and accurate itemized wage statements (Lab. Code § 226(a); and (4) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Labor Code §§ 204, 510, 1194, 1197, 1198, and 2699)

Labor Code section 204 states that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Pursuant to Labor Code section 510, non-exempt employees are entitled to 1.5 times their hourly rate of pay for any work performed in excess of 8 hours in a day or any work performed in excess of 40 hours per week, and twice their regular hourly rate for any work performed past 12 hours in one day or past 8 hours on the seventh consecutive day.

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

Labor Code section 1197 states, in pertinent part, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Section 2 of the applicable Wage Order states that, “Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work.”

In relevant part, Section 4 of the applicable Wage Order states that, “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise.”

In conjunction, the provisions of the applicable Wage Order and Labor Code require employers to pay non-exempt employees no less than their agreed upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” when the employer knows or reasonably should know that employees are working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Upon information and belief, during Ms. Kahn's employment, Emanate Health failed to compensate her and aggrieved employees for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a week due to Emanate Health's policy and practice of rounding the time worked by non-exempt employees in Emanate Health's favor such that Ms. Kahn and other non-exempt employees were not paid for all time actually worked. Also, starting in March of 2020, Ms. Kahn and aggrieved employees were requested to come into work earlier to arrive by their scheduled start times to undergo temperature checks and sanitize at the main hospital entrance. This required process resulted in Ms. Kahn and aggrieved employees waiting an additional 3 to 5 minutes to clock in for their shifts, without payment.

Accordingly, Ms. Kahn, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is pay; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Emanate Health failed and fail to furnish accurate itemized wage statements to Ms. Kahn and, upon information and belief, aggrieved employees. For example, as a result of alleged violations discussed above, Emanate Health furnished wage statements that failed to correctly show: (1) gross wages earned, (2) all deductions, and (3) net wages earned.

Accordingly, Ms. Kahn on behalf of herself and aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 256, and 2699)

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

Emanate Health willfully failed and fails to provide Ms. Kahn, and, upon information and belief, aggrieved employees all wages due and owed upon separation of employment – as described above, Emanate Health violated Labor Code sections 201 or 202.

Accordingly, Ms. Kahn, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC**WAGE ORDERS**

(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid, and \$100 for each subsequent violation.

As set forth above, Emanate Health failed to provide Ms. Kahn and aggrieved employees all wages owed as a result of its policies and practices. Accordingly, Ms. Kahn, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Ms. Kahn's employment with Emanate Health, including time records and wage statements, and Ms. Kahn's confirmation of Emanate Health's unlawful practices and policies. As a result of the foregoing violations, Ms. Kahn is entitled to file a Complaint and invoke the protections of PAGA. Ms. Kahn has placed Emanate Health on notice by mailing a certified copy of this notice to its corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: _____

Alexander Gamez, Esq.

Exhibit 2

BOUCHER LLP

21600 Oxnard Street, Suite 600
Woodland Hills, California 91367

Telephone 818.340.5400
Facsimile 818.340.5401

February 8, 2021

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Emanate Health
c/o Agent for Service of Process
Attn: Robert H. Curry
140 W. College St.
Covina, California 91722

Re: *Michelle Kahn v. Emanate Health, et al.*
Amended Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

This letter is being sent to inform you that Ms. Michelle Kahn hereby amends her prior January 27, 2021 notification of intent to pursue civil penalties pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 ("PAGA" or "the Act") (Lab. Code § 2698 *et seq.*).

Ms. Kahn amends her prior January 27, 2021 correspondence to put Emanate Health on notice that, in addition to the PAGA penalties sought for the underlying Labor Code violations previously alleged, including the alleged violations of Labor Code section 226(a), she will also be seeking penalties as proxy of the LWDA against Emanate Health for its alleged failure to furnish complete and accurate itemized wage statements (Lab. Code § 226(a) for additional factual bases not previously alleged. Accordingly, this correspondence shall serve as written notice of claims for civil penalties that will be pursued by Ms. Kahn as proxy for the Labor and Workforce Development Agency on behalf of all non-exempt aggrieved employees employed by Emanate Health in California during the statutory period, against Emanate Health.

Emanate Health is composed of multiple health care facilities throughout Los Angeles County in California. Emanate Health employed Ms. Kahn from approximately 2014 to September

10, 2020 in multiple roles such as Publication Communication Operator, Clerical Assistant and most recently as Revenue Integrity Assistant at the Emanate Health Foothill Presbyterian Hospital located at 250 S Grand Ave, Glendora, CA 91741. Pursuant to California law, Emanate Health was at all relevant times Ms. Kahn's employer during the statutory period.

In her representative action, Ms. Kahn will seek civil penalties pursuant to PAGA as a result of Emanate Health's failure to: (1) compensate for all hours worked (Lab. Code §§ 204, 223, 1194, 1197, 1198); (2) compensate for all overtime hours worked (Lab. Code § 510); (3) furnish complete and accurate itemized wage statements (Lab. Code § 226(a); and (4) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Labor Code §§ 204, 510, 1194, 1197, 1198, and 2699)

Labor Code section 204 states that "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period."

Pursuant to Labor Code section 510, non-exempt employees are entitled to 1.5 times their hourly rate of pay for any work performed in excess of 8 hours in a day or any work performed in excess of 40 hours per week, and twice their regular hourly rate for any work performed past 12 hours in one day or past 8 hours on the seventh consecutive day.

Labor Code section 1194(a) states, "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1197 states, in pertinent part, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful."

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work."

In relevant part, Section 4 of the applicable Wage Order states that, "Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise."

In conjunction, the provisions of the applicable Wage Order and Labor Code require employers to pay non-exempt employees no less than their agreed upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” when the employer knows or reasonably should know that employees are working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Upon information and belief, during Ms. Kahn’s employment, Emanate Health failed to compensate her and aggrieved employees for all hours worked and overtime hours worked after eight hours in a day and/or after forty hours in a week due to Emanate Health’s policy and practice of rounding the time worked by non-exempt employees in Emanate Health’s favor such that Ms. Kahn and other non-exempt employees were not paid for all time actually worked. Also, starting in March of 2020, Ms. Kahn and aggrieved employees were requested to come into work earlier to arrive by their scheduled start times to undergo temperature checks and sanitize at the main hospital entrance. This required process resulted in Ms. Kahn and aggrieved employees waiting an additional 3 to 5 minutes to clock in for their shifts, without payment.

Accordingly, Ms. Kahn, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is pay; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Emanate Health failed and fail to furnish accurate itemized wage statements to Ms. Kahn and, upon information and belief, aggrieved employees. For example, Ms. Kahn’s wage statements do not accurately show the total hours worked and all rates of pay. Specifically, on Ms. Kahn’s 6/18/20 wage statement, although there are 16 hours stated for “Flexdown”, there is no

corresponding rate or earnings nor are the total hours included, thereby creating confusion for the employee to calculate the total hours worked. Moreover, as a result of alleged violations discussed above, Emanate Health furnished wage statements that failed to correctly show: (1) gross wages earned, (2) all deductions, and (3) net wages earned.

Accordingly, Ms. Kahn on behalf of herself and aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 256, and 2699)

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

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