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Clerk of the Superior Court
By Julie Ledbetter, Deputy Clerk

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CHRIS FARLEY, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

SHARP MEMORIAL HOSPITAL, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2021-00014201-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 233, 246 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B)

1 Plaintiff Chris Farley (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant SHARP MEMORIAL HOSPITAL
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Sharp Memorial Hospital (“DEFENDANT”) is a California
24 Corporation that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT is a hospital in San Diego, California. Opened in 1955,
27 DEFENDANT is Sharp HealthCare's largest hospital and the system's only designated Level
28

1 II trauma center. The hospital has 862 beds.

2 6. PLAINTIFF was employed by DEFENDANT as a Pharmacy Technician in
3 California from August of 2015 to November of 2020 and was at all times classified by
4 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
5 required meal and rest periods and payment of minimum and overtime wages due for all time
6 worked.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in
11 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
12 the time period of January 20, 2020 until a date as determined by the Court (the "PAGA
13 PERIOD").

14 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
15 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
16 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
17 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 233, 246
18 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
19 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby
20 gives rise to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF
21 and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor
22 Code § 2699, *et seq.*

23 9. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
25 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
26 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
2 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
3 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
4 responsible in some manner for one or more of the events and happenings that proximately
5 caused the injuries and damages hereinafter alleged.

6 10. The agents, servants and/or employees of the Defendants and each of them acting
7 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
8 agent, servant and/or employee of the Defendants, and personally participated in the conduct
9 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
10 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
11 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
12 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
13 agents, servants and/or employees.

14 THE CONDUCT

15
16 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
20 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they were
21 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work
22 while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
23 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
24 should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and the
25 AGGRIEVED EMPLOYEES would clock out of DEFENDANT's timekeeping system, in order
26 to perform additional work for DEFENDANT as required to meet DEFENDANT's job
27 requirements. Also, DEFENDANT, as a matter of established company policy and procedure,
28 administered a uniform practice of rounding the actual time worked and recorded by

1 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so
2 that during the course of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES
3 were paid less than they would have been paid had they been paid for actual recorded time
4 rather than “rounded” time. DEFENDANT’s policy and practice not to pay PLAINTIFF and
5 other AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT’s
6 business records. As a result, DEFENDANT failed to pay PLAINTIFF and other AGGRIEVED
7 EMPLOYEES the proper minimum and overtime wages.

8 12. In addition, State and federal law provides that employees must be paid overtime
9 at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED
10 EMPLOYEES were compensated at an hourly rate plus incentive pay that is tied to specific
11 elements of an employee’s performance.

12 13. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
13 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
14 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
15 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
16 hourly basis with incentive compensation when the employees met the various performance
17 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
18 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
19 include the incentive compensation as part of the employees’ “regular rate of pay” for purposes
20 of calculating overtime pay. Management and supervisors described the incentive program to
21 potential and new employees as part of the compensation package. As a matter of law, the
22 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
23 be included in the “regular rate of pay.” The failure to do so has resulted in an underpayment
24 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
25 DEFENDANT.

26 14. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
27 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
28 and other non-exempt employees regularly earn non-discretionary remuneration, including but

1 not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the
2 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
3 EMPLOYEES at their base rates of pay.

4 15. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
6 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
7 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
8 for more than five (5) hours during some shifts without receiving a meal break. Further,
9 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
10 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
11 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
12 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
13 and in accordance with DEFENDANT's corporate policy and practice.

14 16. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
15 were also required from time to time to work in excess of four (4) hours without being provided
16 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
17 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
18 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
19 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
20 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
21 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
22 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
23 to provide employees with off-duty rest periods, which the California Supreme Court defined
24 as time during which an employee is relieved from all work related duties and free from
25 employer control. In so doing, the Court held that the requirement under California law that
26 employers authorize and permit all employees to take rest period means that employers must
27 relieve employees of all duties and relinquish control over how employees spend their time
28 which includes control over the locations where employees may take their rest period.

1 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
2 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
3 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
4 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
5 leave the work premises during their rest period. As a result of being on the premises for his
6 rest period, PLAINTIFF from time to time performed work tasks in the hospital for
7 DEFENDANT due to him being present at the facility.

8 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
9 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
10 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
11 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
12 time worked, meaning the time during which an employee was subject to the control of an
13 employer, including all the time the employee was permitted or suffered to permit this work.
14 DEFENDANT required these employees to work off the clock without paying them for all the
15 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
16 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
17 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
18 time worked by working without their time being accurately recorded and without compensation
19 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
20 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
21 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
22 1197, and 1197.1.

23 18. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
24 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
25 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
26 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
27 2802, employers are required to indemnify employees for all expenses incurred in the course
28 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall

1 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
2 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
3 directions of the employer, even though unlawful, unless the employee, at the time of obeying
4 the directions, believed them to be unlawful."

5 19. In the course of their employment PLAINTIFF and other AGGRIEVED
6 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
7 cellular phones as a result of and in furtherance of their job duties as employees for
8 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
9 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
10 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
11 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
12 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
13 for the benefit of DEFENDANT.

14 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
15 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
16 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
17 provides that every employer shall furnish each of his or her employees with an accurate
18 itemized wage statement in writing showing, among other things, gross wages earned and all
19 applicable hourly rates in effect during the pay period and the corresponding amount of time
20 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
21 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
22 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
23 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
24 which violated Cal. Lab. Code § 226.

25 21. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
26 employment are due and payable twice during each calendar month, on days designated in
27 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
28 requires employers to pay employees all wages owed within seven (7) days of the close of the

1 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
2 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
3 payroll period, including but not limited to for the "Unpaid Earnings" line items of pay.

4 22. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
6 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT is
8 intended to purposefully avoid the payment for all time worked as required by California law
9 which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
10 who complied with the law. To the extent equitable tolling operates to toll claims by the
11 AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted
12 accordingly.

13 23. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
14 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
15 to accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
16 AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal and rest
17 breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
18 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
19 required compensation for work performed by the AGGRIEVED EMPLOYEES and violated
20 the California Labor Code and regulations promulgated thereunder as herein alleged.

21 24. All of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
23 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
24 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
25 AJDAR 12157 (Certified for Publication 12/19/18).

26 **JURISDICTION AND VENUE**

27 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
28

1 Procedure, Section 410.10.

2 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
3 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
4 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
5 in this County and/or conducts substantial business in this County, and (ii) committed the
6 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
7 EMPLOYEES.

8 **FIRST CAUSE OF ACTION**

9 **For Violation of the Private Attorneys General Act**

10 **[Cal. Lab. Code §§ 2698, *et seq.*]**

11 **(By PLAINTIFF and Against All Defendants)**

12 27. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
13 paragraphs of this Complaint.

14 28. PAGA is a mechanism by which the State of California itself can enforce state
15 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
16 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
17 fundamentally a law enforcement action designed to protect the public and not to benefit private
18 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
19 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
20 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
21 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
22 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
23 subject to arbitration.

24 29. PLAINTIFF, and such persons that may be added from time to time who satisfy
25 the requirements and exhaust the administrative procedures under the Private Attorney General
26 Act, brings this Representative Action on behalf of the State of California with respect to
27 himself and all individuals who are or previously were employed by DEFENDANT in
28 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during

1 the time period of January 20, 2020 until a date as determined by the Court (the "PAGA
2 PERIOD").

3 30. On January 20, 2021, PLAINTIFF gave written notice by electronic mail to the
4 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
5 employer of the specific provisions of this code alleged to have been violated as required by
6 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
7 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
8 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
9 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

10 31. The policies, acts and practices heretofore described were and are an unlawful
11 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
13 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
14 to pay minimum wages, (e) failed to reimburse for required expenses, and (f) failed to provide
15 wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§
16 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 233, 246 351, 510, 512, 558(a)(1)(2), 1194, 1197,
17 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
18 (B), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a
19 result of such conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as prescribed
20 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of
21 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
22 EMPLOYEES.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
25 severally, as follows:

26 1. On behalf of the State of California and with respect to all AGGRIEVED

27 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: April 1, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: /s/ Norman Blumenthal
Norman B. Blumenthal

Attorneys for Plaintiff