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Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV378378
Reviewed By: R. Walker

Attorneys for Plaintiff, MARIA WONG-MIKHAIL,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

21CV378378

MARIA WONG-MIKHAIL, on behalf of
herself and all others similarly situated

Plaintiff,

vs.

SUTTER BAY MEDICAL FOUNDATION,
doing business as SUTTER HEALTH, a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages**
- 2) Failure to Timely Pay Wages**
- 3) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions**
- 4) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

1 Plaintiff MARIA WONG-MIKHAIL, on behalf of herself and all others similarly
2 situated assert claims against SUTTER BAY MEDICAL FOUNDATION doing business as
3 SUTTER HEALTH, and DOES 1 through 50, inclusive as follows:

4 **I.**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought
7 against Defendant SUTTER BAY MEDICAL FOUNDATION doing business as SUTTER
8 HEALTH and any subsidiaries and affiliated companies (hereinafter “SUTTER HEALTH” or
9 “Defendant”) on behalf of Plaintiff MARIA WONG-MIKHAIL (hereinafter “Plaintiff”) and all
10 employees not classified as “Exempt” or primarily employed in executive, professional, or
11 administrative capacities, employed by, or formerly employed by SUTTER HEALTH in
12 California (hereinafter referred to as “Non-Exempt Employees” and/or “Class Members”).

13 2. During the liability period, defined as the applicable statute of limitations for
14 each and every cause of action contained herein, Defendant enforced shift schedules,
15 employment policies and practices and/or workload requirements wherein Plaintiff and Non-
16 Exempt Employees were, amongst other statutory violations, not paid all lawful wages owed
17 and not paid timely wages at termination.

18 3. During the liability period, Defendant has also failed to maintain accurate
19 itemized records reflecting total hours worked and have failed to provide Non-Exempt
20 Employees with accurate, itemized wage statements reflecting total hours worked and
21 appropriate rates of pay for those hours worked.

22 4. Plaintiff on behalf of herself and Class Members, bring this action pursuant to
23 Labor Code sections 201, 202, 203, 226, 510, 1194, 1198, Title 8, Section 11040 and any other
24 applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful
25 wages, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

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1 IV.

2 **FACTUAL BACKGROUND**

3 10. On information and belief, Defendant SUTTER HEALTH provides health care
4 services throughout California.

5 11. Plaintiff Maria Wong-Mikhail was employed by Defendant from on or about
6 July 2016 through on or about February 10, 2020. During her employment with Defendant,
7 Plaintiff occupied non-exempt, hourly positions. From on or about July 2016 until on or about
8 September 2019, Plaintiff was employed as a Pharmacist Technician. Thereafter, Plaintiff was
9 employed as a Patient Service Representative from on or about September 2019 until the last
10 day of her employment on or about February 10, 2020.

11 12. During the relevant time period, Defendant implemented a timekeeping policy
12 and practice for Employees which rounded their clock-in and clock-out times in a manner that
13 resulted in a loss of time worked. As a result, Plaintiff and Class Members were consistently
14 underpaid and were required to work off the clock and without pay, including for overtime
15 wages they did not receive.

16 13. During the relevant time period, Defendant failed to pay proper overtime
17 compensation when Non-Exempt Employees worked in excess of eight (8) hours in a workday
18 and/or forty (40) hours in a workweek at the rate of time and one-half (1 1/2) of such
19 employee's regular rate of pay and/or in excess of twelve (12) hours in a workday at the rate of
20 double the employees' regular rate of pay.

21 14. On information and belief, Defendant willfully failed to pay all earned wages in
22 a timely manner to Non-Exempt Employees; nor has Defendant paid to Plaintiff and similarly
23 situated Non-Exempt Employees, upon or after termination of their employment with
24 Defendant, all compensation due, including but not limited to all wages owed.

25 15. Defendant has also failed to maintain accurate itemized records reflecting total
26 hours worked and have failed to provide Non-Exempt Employees with accurate, itemized wage
27 statements reflecting total hours worked and appropriate rates of pay for those hours worked.
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16. Plaintiff is informed and believes, and based thereon allege, that Defendant currently employs, and during the relevant period has employed, over one hundred (100) employees in the State of California in non-exempt hourly positions.

17. Non-Exempt Employees employed by Defendant, at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

V.

CLASS ACTION ALLEGATIONS

18. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are or were employed by SUTTER HEALTH in the state of California, as hourly non-exempt employees within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as “Class” and/or “Class Members”).

19. Plaintiff also seeks to represent Subclasses which are composed of persons satisfying the following definitions:

a. All persons who are or were employed by SUTTER HEALTH in the state of California as hourly non-exempt employees, within the statutory liability period, and were not accurately and fully paid all lawful wages owed to them including minimum wages and/or proper overtime compensation for all their hours worked;

b. All persons who are or were employed by SUTTER HEALTH in the state of California as hourly non-exempt employees who, within the liability period, were not timely paid all wages due and owed to them upon the termination of their employment with Defendant; and

c. All persons who are or were employed by SUTTER HEALTH in the state of California as hourly non-exempt employees who, within the liability period, were not provided with accurate and complete itemized wage statements.

20. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

21. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

22. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employs, and/or during the relevant time period employed, approximately over 100 employees in California who are or have been affected by Defendant's unlawful practices as alleged herein.

B. Commonality

23. There are questions of law and fact common to the Class predominating over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- i. Whether Defendant violated Labor Code §§510, 1194 and applicable IWC Wage Orders by failing to pay all earned wages including proper overtime compensation to Non-Exempt Employees who worked in excess of eight (8) hours in a work day and/or more than forty (40) hours in a workweek and/or in excess of twelve (12) hours in a work day;
- ii. Whether Defendant violated sections 201-202 of the Labor Code by failing to pay all earned wages and/or premium wages due and owing at the time that any Class Members' employment with Defendant terminated;
- iii. Whether Defendant violated sections 226 of the Labor Code and applicable IWC Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt Employees' earned wages, work periods, and deductions;
- iv. Whether Defendant violated section 17200 *et seq.* of the Business and Professions Code by failing to comply with Labor Code sections 201, 202, 203, 226, 510, 1194, 1198, 1199, and applicable IWC Wage Orders

1 v. Whether Defendant violated section 17200 *et seq.* of the Business and
2 Professions Code and Labor Code sections 201, 202, 203, 226, 510, 1194, 1198, 1199,
3 and applicable IWC Wage Orders which violation constitutes a violation of
4 fundamental public policy;

5 **C. Typicality**

6 24. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
7 and all members of the Class sustained injuries and damages arising out of and caused by
8 Defendant's common course of conduct in violation of California laws, regulations, and
9 statutes as alleged herein.

10 **D. Adequacy of Representation**

11 25. Plaintiff will fairly and adequately represent and protect the interests of the
12 members of the Class. Counsel who represents Plaintiff is competent and experienced in
13 litigating large employment class actions.

14 **E. Superiority of Class Action**

15 26. A class action is superior to other available means for the fair and efficient
16 adjudication of this controversy. Individual joinder of all Class Members is not practicable,
17 and questions of law and fact common to the Class predominate over any questions affecting
18 only individual members of the Class. Each member of the Class has been damaged and is
19 entitled to recovery by reason of Defendant's unlawful policy and/or practice herein
20 complained of.

21 27. Class action treatment will allow those similarly situated persons to litigate their
22 claims in the manner that is most efficient and economical for the parties and the judicial
23 system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
24 management of this action that would preclude its maintenance as a class action.

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VI.
CAUSES OF ACTION

First Cause of Action
Failure to Pay Lawful Wages Including Overtime
(Lab. Code §§510, 1194)
(Against All Defendants)

28. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

29. As discussed herein, during the liability period, Defendant implemented a timekeeping policy and practice for Non-Exempt Employees which rounded their clock-in and clock-out times in a manner that resulted in a loss of time worked. As a result, Non-Exempt Employees were consistently underpaid and were required to work off the clock and without pay.

30. During the liability period, Defendant's policies and/or practices and work shift requirements resulted in Plaintiff and Non-Exempt Employees working off the clock and in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

31. As a result of the unlawful acts of Defendant, Plaintiff and the Class they seek to represent have been deprived of compensation for all earned wages including overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194 .

32. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

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Second Cause of Action
Failure to Timely Pay Wages Due At Termination
(Lab. Code §§ 201-203)
(Against All Defendants)

33. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

34. Sections 201 and 202 of the California Labor Code require Defendant to pay its employees all wages due within 72 hours of termination of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

35. Affected class members are entitled to compensation for all forms of wages earned, including overtime compensation, but to date have not received such compensation therefore entitling them Labor Code section 203 penalties.

36. More than 30 days have passed since Plaintiff and affected Class Members have left Defendant's employ, and on information and belief, have not received payment pursuant to Labor Code §203. As a consequence of Defendant's willful conduct in not paying all earned wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code section 203 for failure to pay legal wages.

37. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

Third Cause of Action
Knowing and Intentional Failure to Comply With Itemized Employee
Wage Statement Provisions
(Lab. Code § 226(b))
(Against All Defendants)

38. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein

39. Section 226(a) of the California Labor Code requires Defendant to itemize in wage statements all deductions from payment of wages and to accurately report total hours

1 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
2 Defendants to maintain time records showing, among others, when the employee begins and
3 ends each work period, meal periods, split shift intervals and total daily hours worked in an
4 itemized wage statement, and must show all deductions and reimbursements from payment of
5 wages, and accurately report total hours worked by Plaintiff and the members of the proposed
6 class. On information and belief, Defendant has failed to record all or some of the items
7 delineated in Industrial Wage Orders and Labor Code §226.

8 40. Plaintiff and Class Members have been injured by Defendant's actions by
9 rendering them unaware of the full compensation to which they were entitled under applicable
10 provisions of the California Labor Code and applicable IWC Wage Orders.

11 41. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
12 maximum of \$4,000.00 each for record-keeping violations.

13 42. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
14 described herein and below.

15 **Fourth Cause of Action**
16 Violation of Unfair Competition Law
17 (Bus. & Prof. Code, §§ 17200-17208)
18 (Against All Defendants)

19 43. Plaintiff repeats and incorporates herein by reference each and every allegation
20 set forth above, as though fully set forth herein.

21 44. Business & Professions Code Section 17200 provides:

22 As used in this chapter, unfair competition shall mean and include any **unlawful,**
23 **unfair** or fraudulent business act or practice and unfair, deceptive, untrue or
24 misleading advertising and any act prohibited by Chapter 1 (commencing with
Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)
(Emphasis added.)

25 45. Defendant's violations of the Labor Code and Wage Order provisions set forth
26 above constitute unlawful and/or unfair business acts or practices.

27 46. Defendant's violations of Business and Professions Code section 16600 set forth
28 above constitute unlawful and/or unfair business acts or practices.

1 47. The actions of Defendant, as alleged within this Complaint, constitutes false,
2 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of
3 Business and Professions Code section 17200, *et seq.*

4 48. Plaintiff and Class Members have been personally aggrieved by Defendant's
5 unlawful and unfair business acts and practices alleged herein.

6 49. As a direct and proximate result of the unfair business practices of Defendant,
7 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, are
8 entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and
9 members of the Class as a result of the business acts and practices described herein.

10 50. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
11 described herein and below.

12 **VII.**

13 **PRAYER**

14 WHEREFORE, Plaintiff prays for judgment as follows:

- 15 1. That the Court determine that this action may be maintained as a class action;
- 16 2. For compensatory damages in an amount according to proof with interest thereon;
- 17 3. For economic and/or special damages in an amount according to proof with interest
18 thereon;
- 19 4. For premium pay and penalties pursuant to Labor Code §§ 203, 226;
- 20 5. For attorneys' fees, interests and costs of suit under Labor Code §§ 226, 1194;
- 21 6. For such other and further relief as the Court deems just and proper.

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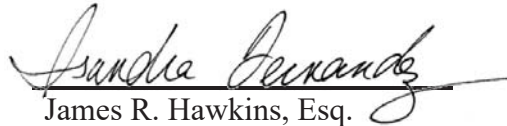
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Dated: January 21, 2020

JAMES HAWKINS, APLC

A handwritten signature in cursive script, appearing to read "Isandra Fernandez", written over a horizontal line.

James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Attorneys for Plaintiff

MARIA WONG-MIKHAIL