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MADERA SUPERIOR COURT
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DEPUTY

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

JASON NASR, as an individual and on behalf of
all others similarly situated, and as a private
attorney general,

Plaintiff,

vs.

SAN JOAQUIN VALLEY REHABILITATION
HOSPITAL, a Delaware limited liability
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. MCV084862

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Unpaid Overtime
(Lab. Code §§ 510, 1198)
- (2) Unpaid Sick Pay Wages
(Lab. Code §§ 201-204, 233, 246)
- (3) Rest Period Violations
(Lab. Code § 226.7);
- (4) Meal Period Violations
(Lab. Code §§ 226.7, 512);
- (5) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));
- (6) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and
- (7) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

BY FAX

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Jason Nasr, submits this First Amended Class and
3 Representative Action Complaint (the “Complaint”) against Defendant, San Joaquin Valley
4 Rehabilitation Hospital, and Does 1 through 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants. The
8 Complaint addresses Defendants’ violations of Labor Code sections 201-204, 226, 226.7, 233, 246, 510,
9 512, 1174, 1182.12, 1197, and 1198, and seeks penalties, damages, and other relief pursuant to, among
10 other provisions, Labor Code sections 203, 210, 218, 218.5, 218.6, 226.3, 558, 1194, 1194.2, 1197.1,
11 1199, and 2698 et seq., and the Unfair Competition Law, codified at Business and Professions Code
12 sections 17200 et seq. (the “UCL”).¹

13 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
14 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
15 failing to pay overtime wages, pay sick pay wages, authorize and permit duty-free rest periods, provide
16 duty-free meal periods, pay all premium wages for such missed rest periods and meal periods, and
17 provide accurate itemized wage statements.

18 3. Defendants routinely underpay overtime wages and sick pay wages. Specifically,
19 Plaintiff and other non-exempt employees earn non-discretionary remuneration, including for example
20 bonuses, that Defendants fail to consider when calculating the regular rate of pay for purposes of paying
21 overtime wages. Moreover, rather than pay sick pay wages at the regular rate of pay, Defendants
22 underpay sick pay wages to Plaintiff and other non-exempt employees at their base rates of pay.

23 4. Defendants routinely fail to authorize and permit Plaintiff and other non-exempt
24 employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction
25 thereof. On shifts exceeding five hours of work, Defendants also routinely failed to provide Plaintiff and
26 other non-exempt employees with a duty-free 30-minute meal period within the first five hours of work.
27 Specifically, due to Defendants’ staffing practices, Plaintiff and other non-exempt employees were
28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 routinely not allowed to take their rest periods, and they were routinely not allowed to take a full 30
2 minutes for their meal periods within the first five hours of their work shifts. Despite not permitting
3 duty-free rest periods and meal periods, Defendants also routinely failed to pay Plaintiff and other non-
4 exempt employees the requisite rest period and meal period premium pay of an additional hour of
5 wages. Moreover, when meal period and rest period premium wages were paid, such premiums failed to
6 consider non-discretionary remuneration and were not paid at the regular rate of compensation.

7 5. Because Plaintiff and other non-exempt employees are not paid all of their wages,
8 Defendants also routinely fail to timely pay Plaintiff and other non-exempt employees all wages during
9 employment and fail to timely pay all due wages upon separation of employment. Likewise, Defendants
10 also routinely failed to provide accurate itemized wage statements to Plaintiff and other non-exempt
11 employees. Specifically, as a result of the above practices, Defendants fail to furnish Plaintiff and other
12 non-exempt employees with wage statements that accurately showed and itemized all applicable hourly
13 rates, the gross wages earned, and the net wages earned, including all overtime wages, sick pay wages,
14 and premium wages earned for missed rest periods and meal periods.

15 6. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
16 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
17 customs that knowingly deny its employees the above stated rights and benefits.

18 7. The policies, practices, and customs of Defendants resulted in unjust enrichment of
19 Defendants and an unfair business advantage over businesses that comply with the Labor Code.

20 JURISDICTION AND VENUE

21 8. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
22 Defendants' violations of Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1174, 1182.12, 1197, and
23 1198, and the UCL.

24 9. Venue is proper in the County of Madera. Plaintiff is located in Madera, California.

25 PARTIES

26 10. Plaintiff began working for Defendants in or about May of 2020 and worked in
27 California for Defendants for 30 or more days within a year. Until his employment as a clinic liaison
28 ended in or about December of 2020, Plaintiff was paid on an hourly basis as a non-exempt employee,

1 accrued and actually used sick leave, worked more than eight hours in a workday or 40 hours in a
2 workweek, and earned non-discretionary remuneration, including for example bonuses. Such payments
3 were not considered when calculating Plaintiff's regular rate of pay for purposes of paying either
4 overtime wages or sick pay wages. Plaintiff also was not provided a duty-free, 10-minute rest period for
5 every four hours or major fraction thereof worked, a duty-free 30-minute meal periods within the first
6 five hours of work, or premium pay of an additional hour of wages for missed rest periods and meal
7 periods. Plaintiff also received wage statements that inaccurately stated the applicable hourly rates,
8 gross wages earned, and net wages earned. Plaintiff thus is a victim of the policies, practices, and
9 customs of Defendants complained of in this action in ways that have deprived him of the rights
10 guaranteed by the Labor Code and the UCL.

11 11. Plaintiff is informed and believes that San Joaquin Valley Rehabilitation Hospital, a
12 fictitious business name of 7173 North Sharon Avenue Operating Company, LLC, was and is a
13 Delaware limited liability company. Plaintiff is informed and believes that at all times herein mentioned
14 named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or
15 partnerships that are and were licensed to do business and actually doing business in the State of
16 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
17 subject to Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1174, 1182.12, 1197, and 1198, and the
18 UCL.

19 12. Plaintiff does not know the true names or capacities of the defendants sued herein as
20 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
21 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names
22 and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was
23 responsible in some way for the matters alleged herein and proximately caused the illegal employment
24 practices, wrongs, and injuries complained of herein.

25 13. At all times herein mentioned, each of said Defendants participated in the doing of the
26 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
27 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
28 scope of said agency and employment.

14. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

15. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

16. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes of current and former non-exempt employees of Defendants in the State of California: (i) who worked more than eight hours in a day or 40 hours in a week in a workweek that they earned non-discretionary remuneration, including for example bonuses, since September 29, 2016 (the “Overtime Class”); (ii) who were paid sick pay wages in any workweek in which they earned non-discretionary remuneration, including for example bonuses, since September 29, 2016 (the “Sick Pay Class”); (iii) who worked at least 3.5 hours in a work shift since September 29, 2016 (the “Rest Period Class”); and (iv) who worked more than 5.0 hours in a work shift since September 29, 2016 (the “Meal Period Class”). The Overtime Class, Sick Pay Class, Rest Period Class, and Meal Period Class are collectively referred to as the “Class.”

17. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1174, 1182.12, 1197, and 1198, and the UCL against Plaintiff and the Class by failing to pay overtime wages, pay sick pay wages, authorize and permit duty-free rest periods, provide duty-free meal periods, pay

premium wages for such missed rest periods and meal periods, and provide accurate itemized wage statements.

18. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and fully and adequately able to represent Plaintiff and the Class. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

19. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of routinely failing to (i) pay overtime wages, (ii) pay sick pay wages, (iii) authorize and permit duty-free rest periods, (iv) provide duty-free meal periods, (v) pay all premium wages for such missed rest periods and meal periods, (vi) timely pay all wages, and (vii) provide accurate itemized wage statements.

20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis as a non-exempt employee, accrued and actually used sick leave, worked more than eight hours in a workday or 40 hours in a workweek, and earned non-discretionary remuneration, including for example bonuses. Such payments were not considered when calculating Plaintiff's regular rate of pay for purposes of paying either overtime wages or sick pay wages. Plaintiff also was not provided a duty-free, 10-minute rest period for every four hours or major fraction thereof worked, a duty-free 30-minute meal periods within the first five hours of work, or premium pay of an additional hour of wages for missed rest periods and meal periods. Plaintiff also received wage statements that inaccurately stated the applicable hourly rates, gross wages earned, and net wages earned. Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

21. The Labor Code is broadly remedial in nature. Its laws serve an important public interest in establishing minimum working conditions and requirements in California. These labor standards

1 protect employees from onerous terms and conditions of employment or exploitation by employers who
2 have superior economic and bargaining power.

3 22. The nature of this action and the format of laws available to Plaintiff and members of the
4 Class make the class action format a particularly efficient and appropriate procedure to redress the
5 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
6 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
7 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
8 legal resources. Requiring each member of the Class to pursue an individual remedy would also
9 discourage the assertion of lawful claims by employees who would be disinclined to file an action
10 against their former or current employer for real and justifiable fear of retaliation and permanent
11 damage to their careers at their current or subsequent employment.

12 23. The prosecution of separate actions by individual members of the Class, even if possible,
13 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
14 members of the Class that would establish potentially incompatible standards of conduct for
15 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
16 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
17 of other members of the Class not parties to the adjudications. Further, the claims of the individual
18 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
19 the concomitant costs and expenses.

20 24. Defendants' pattern, practice, and uniform administration of corporate policy in violation
21 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
22 rights of Plaintiff and the Class under Sections 201-204, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 233,
23 246, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, applicable IWC Wage
24 Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover damages and restitution,
25 including unpaid wages and premium wages and interest thereon, applicable penalties, liquidated
26 damages, reasonable attorneys' fees, and costs of suit.

25. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Unpaid Overtime Wages (Lab. Code §§ 510 and 1198)

(By Plaintiff and the Overtime Class Against All Defendants)

26. The preceding paragraphs are re-alleged and incorporated by this reference.

27. Section 510 and the applicable IWC Wage Order provide that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee” and that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” Section 1198 makes unlawful conditions of labor that are prohibited by the applicable IWC Wage Order.

28. As a matter of policy and practice, Defendants fail to pay all overtime wages to Plaintiff and the Overtime Class. Plaintiff and the Overtime Class earn non-discretionary remuneration, including for example bonuses, that Defendants fail to consider when calculating the regular rate of pay for purposes of paying overtime wages. Defendants underpay overtime wages by failing to consider non-discretionary remuneration, including for example bonuses, that Plaintiff and the Overtime Class earn. As such, Plaintiff and the Overtime Class are owed underpaid overtime wages.

29. Moreover, Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (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. Section 203 provides that if an employer willfully fails to pay wages owed in

1 accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from
2 the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30)
3 days.

4 30. Based on Defendants' failure to pay all overtime wages to Plaintiff and the Overtime
5 Class and as a matter of policy and practice, Defendants fail to timely pay all due wages and fail to
6 timely pay all due wages upon separation of employment. On information and belief, Defendants were
7 advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it
8 relates to Plaintiff's allegations. Because Defendants willfully fail to timely pay Plaintiff and the
9 Overtime Class all overtime wages due, Defendants are subject to applicable penalties.

10 31. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
11 entitles Plaintiff and the Overtime Class to recover underpaid overtime wages, including interest
12 thereon, applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

13 **SECOND CAUSE OF ACTION**

14 **Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 210, 233, 246)**

15 **(By Plaintiff and the Sick Pay Class Against All Defendants)**

16 32. The preceding paragraphs are re-alleged and incorporated by this reference.

17 33. Section 233 provides that an employer must permit an employee to use accrued sick
18 leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
19 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Section
20 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to
21 sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i)
22 "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of
23 pay for the workweek in which the employee uses paid sick time, whether or not the employee actually
24 works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated
25 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
26 hours worked in the full pay periods of the prior 90 days of employment." Under Sections 218 and 233,
27 employees may sue to recover underpaid sick pay wages as damages.

1 34. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the
2 Sick Pay Class at the incorrect rate of pay. Plaintiff and the Sick Pay Class regularly use accrued sick
3 leave in workweeks in which they also earn non-discretionary remuneration, including for example
4 bonuses. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the Sick
5 Pay Class at the base hourly rate of pay, as opposed to the regular rate of pay, which would consider all
6 non-discretionary remuneration in addition to base hourly wages, or the rate resulting from dividing the
7 employee's total wages, not including overtime premium pay, by the employee's total hours worked in
8 the full pay periods of the prior 90 days of employment. As a result, Defendants underpay sick pay
9 wages to Plaintiff and the Sick Pay Class.

10 35. Section 204 provides that wages generally are due and payable twice during each
11 calendar month and are to be paid no later than the payday for the next regular payroll period.
12 Consistent with Section 204, Section 246 specifically requires that, upon use of accrued sick leave,
13 vested sick pay wages are due and to be paid no later than the payday for the next regular payroll period
14 after accrued sick leave is used as paid sick time. Similarly, Section 201 provides that if an employer
15 discharges an employee, wages earned and unpaid at the time of discharge are due and payable
16 immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than
17 72 hours after an employee quits his or her employment, unless the employee has given 72-hour notice
18 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
19 quitting. The Labor Code penalizes untimely payments. For example, Section 203 provides that if an
20 employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of
21 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
22 wages shall not continue for more than thirty (30) days. Likewise, Section 210 provides penalties for
23 violations of Section 204 and untimely payments during employment. Under Sections 203, 210, and
24 218, employees may sue to recover applicable penalties.

25 36. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
26 sick pay wages and thus do not timely pay Plaintiff and the Sick Pay Class all owing and underpaid sick
27 pay wages. As a result, Defendants violate Sections 201-204, 210, 233, and 246, among other Labor
28 Code provisions. Plaintiff is informed and believe that Defendants were advised by skilled lawyers and

1 knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations,
2 especially since the California Supreme Court has explained that "[c]ourts have recognized that 'wages'
3 also include those benefits to which an employee is entitled as a part of his or her compensation,
4 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods.,*
5 *Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay
6 Plaintiff and the Sick Pay Class all sick pay wages due, Defendants are subject to applicable penalties.

7 37. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
8 entitles Plaintiff and the Sick Pay Class to underpaid sick pay wages, including interest thereon,
9 applicable penalties, attorneys' fees, and costs of suit.

10 **THIRD CAUSE OF ACTION**

11 **Rest Period Violations (Lab. Code § 226.7)**

12 **(By Plaintiff and the Rest Period Class Against All Defendants)**

13 38. The preceding paragraphs are re-alleged and incorporated by this reference.

14 39. Because Plaintiff and the Managerial Class were non-exempt employees, Defendants
15 were required to comply with Section 226.7 and the applicable IWC Wage Order. The applicable laws
16 generally require an employer to provide a duty-free, 10-minute rest period for every four hours
17 worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not require an
18 employee to work during a rest period. Section 226.7(c) states that "the employer shall pay the
19 employee one additional hour of pay at the employee's regular rate of compensation for each workday
20 that the meal or rest or recovery period is not provided."

21 40. As a matter of policy and practice, Defendants fail to permit off-duty rest periods to
22 Plaintiff and the Rest Period Class. As a matter of policy and practice, Defendants also fail to pay an
23 additional hour of pay at the regular rate of compensation for each rest period missed by Plaintiff and
24 the Rest Period Class. Specifically, due to Defendants' staffing practices, Plaintiff and the Rest Period
25 Class were routinely not allowed to take their rest periods during their shifts of at least 3.5 hours.
26 Despite not permitting duty-free rest periods, Defendants fail to pay Plaintiff and the Rest Period Class
27 the requisite rest period premium pay of an additional hour of wages at the regular rate of compensation.
28 Defendants thus violate Section 226.7 and the applicable IWC Wage Order. Despite not permitting

1 duty-free rest periods, Defendants fail to pay Plaintiff and the Rest Period Class the requisite rest period
2 premium pay of an additional hour of wages at the regular rate of compensation.

3 41. Based on Defendants' failure to pay rest period premium pay to Plaintiff and the Rest
4 Period Class and as a matter of policy and practice, Defendants fail to timely pay Plaintiff and the Rest
5 Period Class all due wages. On information and belief, Defendants were advised by skilled lawyers and
6 knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations.
7 Because Defendants willfully fail to timely pay Plaintiff and the Rest Period Class all rest period
8 premium pay due, Defendants are subject to applicable penalties.

9 42. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
10 entitles Plaintiff and the Rest Period Class to recover unpaid rest period premium pay, including interest
11 thereon, applicable penalties, attorneys' fees, and costs of suit.

12 **FOURTH CAUSE OF ACTION**

13 **Meal Period Violations (Lab. Code §§ 226.7, 512)**

14 **(By Plaintiff and the Managerial Class Against All Defendants)**

15 43. The preceding paragraphs are re-alleged and incorporated by this reference.

16 44. Because Plaintiff and the Managerial Class were non-exempt employees, Defendants
17 were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section
18 512(a) generally prohibits employment of an individual for a work period of more than five hours per
19 day without providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes.
20 Section 226.7(b) provides that an employer shall not require an employee to work during a meal period.
21 Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the
22 employee's regular rate of compensation for each workday that the meal or rest or recovery period is
23 not provided."

24 45. As a matter of policy and practice on shifts exceeding five hours of work, Defendants fail
25 to provide Plaintiffs and the Meal Period Class with a duty-free 30-minute meal period within the first five
26 hours of work. As a matter of policy and practice, Defendants also do not pay an additional hour of pay
27 at the regular rate of compensation for each meal period missed by Plaintiff and the Meal Period Class.
28 Specifically, due to Defendants' staffing practices, Plaintiff and the Meal Period Class were routinely

1 not allowed to take a full 30 minutes for their meal periods within the first five hours of their work
2 shifts. Despite not permitting duty-free meal periods, Defendants fail to pay Plaintiff and the Meal
3 Period Class the requisite meal period premium pay of an additional hour of wages at the regular rate of
4 compensation.

5 46. Based on Defendants' failure to pay meal period premium pay to Plaintiff and the Meal
6 Period Class and as a matter of policy and practice, Defendants fail to timely pay Plaintiff and the Meal
7 Period Class all due wages. On information and belief, Defendants were advised by skilled lawyers and
8 knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations.
9 Because Defendants willfully fail to timely pay Plaintiff and the Meal Period Class all meal period
10 premium pay due, Defendants are subject to applicable penalties.

11 47. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
12 entitles Plaintiff and the Meal Period Class to recover unpaid meal period premium pay and unpaid
13 wages for on-duty hours worked, including interest thereon, applicable penalties, attorneys' fees, and
14 costs of suit.

15 **FIFTH CAUSE OF ACTION**

16 **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

17 **(By Plaintiff and the Class Against All Defendants)**

18 48. The preceding paragraphs are re-alleged and incorporated by this reference.

19 49. Section 226(a) requires an employer to furnish to its employees itemized wage
20 statements that show accurate information, including without limitation, the applicable hourly rates in
21 effect during the pay period, gross wages earned, and net wages earned.

22 50. As a result of Defendants' failure to pay all wages, including overtime wages, sick pay
23 wages, and premium pay, and as a matter of policy and practice, Defendants fail to provide accurate
24 itemized wage statements to Plaintiff and the Class. Specifically, Defendants furnish Plaintiff and the
25 Overtime Class, the Sick Pay Class, the Meal Period Class, and the Rest Period Class with wage
26 statements that inaccurately state the applicable hourly rate for overtime wage rate, sick pay wages, and
27 premium pay, as well as the gross wages earned and net wages earned.
28

1 51. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
2 entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees, and costs of suit.

3 **SIXTH CAUSE OF ACTION**

4 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

5 **(By Plaintiff, the Overtime Class, and the Sick Pay Class Against All Defendants)**

6 52. The preceding paragraphs are re-alleged and incorporated by this reference.

7 53. Plaintiff is informed and believes that at Defendants have engaged and continue to
8 engage in unfair and unlawful business practices in California by utilizing the employment policies and
9 practices alleged herein, including the failures to pay overtime wages and pay sick pay wages.

10 54. Defendants' utilization of such unfair and unlawful business practices constitutes unfair
11 and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed
12 by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition
13 standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

14 55. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
15 entitles Plaintiff and the Class to full restitution of all monies withheld, acquired, or converted by
16 Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys'
17 fees, and costs of suit.

18 **SEVENTH CAUSE OF ACTION**

19 **Violation of Labor Code §§ 2698 *Et Seq.***

20 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

21 56. The preceding paragraphs are re-alleged and incorporated by this reference.

22 57. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
23 et seq. ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
24 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226, 510, 1182.12,
25 1174, 1197, 1198, 1199 and 2802 committed since September 29, 2019, against all aggrieved
26 employees. Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged
27 violations was committed against Plaintiff as an employee of Defendants.

58. As stated herein, Defendants fail to (i) pay overtime wages, (ii) pay sick pay wages, (iii) authorize and permit duty-free rest periods, (iv) provide duty-free meal periods, (v) pay all premium wages for such missed rest periods and meal periods, (vi) timely pay all wages, and (vii) provide accurate itemized wage statements. Moreover, Defendants also violate Sections 1174, 1198, and 1199, and sections 7 & 11 of the applicable IWC Wage Order by failing to maintain accurate time records showing when Plaintiff and aggrieved employees begin and end their work shifts. Specifically, Defendants do not allow Plaintiff and aggrieved employees to record the exact times that they begin and end their meal periods.

59. On or about March 2, 2021, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 201-204, 226, 510, 1174, 1182.12, 1197, 1198, 1199 and 2802. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

60. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all applicable penalties for Defendants' violations against all aggrieved employees for the period described above.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including unpaid overtime wages and interest thereon, and penalties pursuant to Sections 203, 210, 218, 218.6, and 1194, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for damages, including sick pay wages and interest thereon, penalties, and costs and attorneys' fees, pursuant to Sections 203, 210, 218, 218.5, 218.6, 233, 246, and 248.5;

1 6. Upon the Third Cause of Action for damages, including unpaid rest period premium pay
2 and interest thereon, and penalties pursuant to Sections 210, 218.6, and 226.7, and for costs and
3 attorneys' fees;

4 7. Upon the Fourth Cause of Action for damages, including unpaid meal period premium
5 pay, unpaid wages, and interest thereon, and penalties pursuant to Sections 210, 218.6, 226.7, 512,
6 1194, 1194.2, and 1197.1, and for costs and attorneys' fees;

7 8. Upon the Fifth Cause of Action for penalties pursuant to Section 226, and for costs and
8 attorneys' fees;

9 9. Upon the Sixth Cause of Action for restitution of all funds unlawfully acquired by
10 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
11 and for costs and attorneys' fees;

12 10. Upon the Seventh Cause of Action for penalties pursuant to Section 2699(a), (f), and (g),
13 and for costs and attorneys' fees;

14 11. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code,
15 UCL, and Code of Civil Procedure section 1021.5; and

16 12. For such other and further relief that the Court may deem just and proper.

17 DATED: May 6, 2021

DIVERSITY LAW GROUP, P.C.

18 By: 
19 _____

Larry W. Lee
Simon L. Yang

Attorneys for Plaintiff

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On May 6, 2021, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

San Joaquin Valley Rehabilitation Hospital
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808
Agent for Service of Process

 X BY MAIL: by placing the original or X a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 6, 2021, at Los Angeles, California.

Erika Mejia