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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SYDNEY STONE, an individual, KELSEI FAGER
an individual, each on their own behalf
and on behalf of all others similarly situated

Plaintiffs,

vs

SCRIPPS HEALTH, a California corporation; and
DOES 1-25, inclusive,

Defendant

Case No.: 37-2021-00042950-CU-OE-CTL

**CLASS AND REPRESENTATIVE
ACTION**

- 1) Unlawful Wage Deductions in Violation of Lab. Cod. § 221
- 2) Failure to Provide Accurate Wage Statements in Violation of Lab. Cod. § 226(a)
- 3) Requiring Employees to Agree to Illegal Terms and Conditions of Employment in Violation of Lab. Cod. § 432.5
- 4) Unlawful Whistleblower Retaliation in Violation of Lab. Cod. § 1102.5(c)
- 5) Unfair Competition and Unlawful Business Practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*
- 6) Violation of the Private Attorney Generals Act of 2004, Labor Code §2698 *et seq.*

JURY TRIAL DEMANDED

Plaintiffs, SYDNEY STONE and KELSEI FAGER, (“Plaintiffs”), each individually and on behalf of all others similarly situated, file this Complaint against Defendant, SCRIPPS HEALTH, a California corporation and DOES 1 to 25 (collectively “Defendants”).

I. INTRODUCTION

This is a Class Action pursuant to Code of Civil Procedure section 382, and a Representative Action under the Private Attorneys General Act (“PAGA”) against Defendant, SCRIPPS HEALTH (“Scripps” or “Defendant”) for (a) Unlawful Wage Deductions in violation of Lab. Cod. § 221; and (b) Failure to Provide Accurate Wage Statements in violation of Lab. Cod. § 226(a); and (c) Illegal Terms and Conditions of Employment in violation of Lab. Cod. § 432.5; and (d) Unlawful Whistleblower Retaliation in violation of Lab. Cod. § 1102.5(c); and Plaintiffs allege that these unlawful acts constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition and Unlawful Business Practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*; and further violate the Private Attorney Generals Act of 2004, Labor Code §2698 *et seq.*

Plaintiffs bring these claims on behalf of themselves and on behalf of similarly situated non-exempt employees currently or formerly employed by Defendant within the State of California from October 5, 2017, through the date of judgment (the “Class Members”) and seek all damages as permitted by applicable law, as well as attorneys’ fees and penalties as provided by statute, plus interest and costs.

Defendant employs and have employed Plaintiffs and the Class Members at various Scripps Health locations throughout the State of California. Any differences in job duties or title as between Class Members are legally insignificant to the issues present in this action and are no bar to class certification. Plaintiffs are informed and believe, and based thereon, allege that Defendant currently and formerly employed thousands of hourly nonexempt employees as registered nurses, charge nurses, certified nursing assistants, doctors' assistants, technicians, therapists, clerical and janitorial staff or other similarly situated employees.

1 The unlawful acts complained of herein occurred, are occurring and will occur at least in
2 part within the time period from four (4) years preceding the filing of the Complaint, up to and
3 including the time of trial (the "Class Period")

4 II. JURISDICTION AND VENUE

5 1. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section
6 395. Plaintiffs are each residents of California and worked for Defendant in California, and around
7 San Diego and other counties in California. Defendant conducts business in San Diego County and
8 the unlawful acts alleged herein occurred within and have a direct effect on Plaintiffs and those
9 similarly situated within the State of California and within the County of San Diego.

10 2. This Court has jurisdiction over the violations of the Labor Code and the PAGA.

11 3. The Court also has jurisdiction over Plaintiffs' and Class Members' claims pursuant
12 to Business and Professions Code sections 17200-17208, who also seek injunctive relief and
13 restitution of ill-gotten benefits arising from Defendants' unlawful business acts and practices under
14 California Business and Professions Code sections 17200-17208.

15 4. Defendant is a California corporation. There is no federal question at issue, as the issues
16 arise under and are based solely on California State law including the California Labor Code, the
17 California Code of Civil Procedure and the California Business and Professions Code.

18 5. The PAGA representative action and claims plead thereunder are not subject to
19 removal. 28 U.S.C. section 1332(a)-(d).

20 THE PARTIES

21 Plaintiffs

22 6. Plaintiff, Sydney Stone is a current employee of Defendant. She is a resident of San
23 Diego, California and at all relevant times has worked for Defendant at their hospital located in San
24 Diego, California as a full time, nonexempt, nurse practitioner. She has been employed with
25 Defendant since on or about June of 2019 and will serve as an adequate, typical and active
26 participant and class representative for the proposed Class.
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1 7. Plaintiff, Kelsei Fager is a current employee of Defendant. She is a resident of San Diego,
2 California and at all relevant times has worked for Defendant at their hospital located in San Diego,
3 California as a full time, nonexempt, nurse practitioner. She has been employed with Defendant
4 since on or about January of 2019, and will serve as an adequate, typical and active participant and
5 class representative for the proposed Class.

6 **Defendant**

7 8. Defendant Scripps Health (“Scripps”) is a California corporation, headquartered in San
8 Diego, California in the County of San Diego, and was the employer of Plaintiffs and the employer
9 of the putative Class, Subclass(es) and alleged PAGA members during the Class Period and the
10 relevant PAGA liability period.

11 9. The true names and capacities, whether individual, corporate, associate, or otherwise, of
12 defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to Plaintiffs, who
13 therefore sue these defendants by such fictitious names. (See CCP § 474).

14 10. Plaintiffs are informed and believe, and based thereon allege, that each defendant
15 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
16 herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
17 capacities of the defendants designated hereinafter as DOES when such identities become known.

18 11. Plaintiffs are informed and believe, and based thereon allege, that each defendant,
19 including the DOE defendants acted in all respects pertinent to this action as the agent of the other
20 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto. In
21 doing the things alleged herein, each defendant was acting within the course and scope of this
22 agency and was acting with the consent, permission and authorization of each of the remaining
23 Defendants. All actions of each defendant alleged in the causes of action (into which this paragraph
24 is incorporated by reference) were ratified and approved by the officers or managing agents of each
25 of the other Defendants and are legally attributable to the other Defendants.

26 12. Plaintiffs are informed and believe that, at all times herein mentioned, Defendants,
27 including the fictitious DOE Defendants, were the representatives, agents and/or employees of each
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1 of the remaining Defendants and in doing the things mentioned herein was acting with the consent,
2 permission and authorization of each of the other Defendants. All actions of each alleged in the
3 causes of action (into which this paragraph is incorporated by reference) were ratified and approved
4 by the officers or managing agents of each of the other Defendants.

5 **SUMMARY OF CLASS CLAIMS**

6 13. Plaintiffs bring this action on behalf of themselves and all Class Members who were
7 subject to the same or similar illegal policies and practices as set forth herein during the Class
8 Period.

9 14. During their employment with Defendant, the nonexempt Plaintiffs and a substantial
10 number of the non-exempt putative Class Members were subjected to unlawful practices, including
11 Defendant's repeated incidents of unauthorized deduction of wages from such individuals' pay
12 checks without first obtaining voluntary, written consent to do so in violation of California Labor
13 Code Section 221. On multiple occasions, during the Class Period, Defendant claimed that due to
14 payroll calculation errors that they had overpaid Plaintiffs and similarly situated putative Class
15 Members. Whenever these "payroll errors" occurred, Defendant, unilaterally and unlawfully
16 deducted the "overpayments" from Plaintiffs' and Class Members pay checks without bothering to
17 obtain their employees' voluntary, written authorization or consent.

18 15. In addition, during the Class Period, Plaintiff and putative Class members routinely
19 received wage statements that failed to accurately state the legal name of the entity employer. At all
20 relevant times, the Plaintiffs and similarly situated Class Members were unquestionably employed
21 by the legal corporate entity, Scripps Health. However, the employer name reflected on their pay
22 stubs was reflected as "Scripps Health Payroll." There is no such legal entity recognized or
23 registered with the California Secretary of State.

24 16. Further, during the Class Period, the Plaintiffs and putative Class Members are/were
25 subjected to and forced to comply with an illegal rest and meal break policy, coined the "Buddy
26 Policy" by Defendant. Under the "Buddy Policy" nonexempt employees are required to team up to
27 take meal and rest breaks with their "buddy" covering their respectively-assigned beds.
28

Unfortunately there is not nearly enough staff to legally and safely pair “buddies,” - meaning a large majority of the nonexempt employees in fact do not have coverage of their beds to go on meal and rest breaks. In response to this staffing shortage, Defendant nevertheless still requires all nonexempt employees to take their rest and meal breaks regardless of whether they are able to find a “buddy” to watch their assigned beds, and thus taking such breaks means abandoning and leaving their assigned patients unattended. Leaving a patient unattended is an illegal violation of the State’s regulations governing staff to patient safety ratios.¹ Plaintiffs and those similarly situated who complained about the unlawful consequences of the rest and meal break “Buddy System” have been threatened with disciplinary action, including termination, if they fail or refuse to comply, even though to comply with Defendant’s policy mandate, may force them to break the law and poses a direct threat to their nursing license. In threatening to retaliate against those who fail or refuse to participate in the illegal activity mandated by Defendant’s rest and meal break “Buddy System” policy, Defendant has also violated Labor Code §1102.5(c), which prohibits an employer from “*retaliating against an employee for refusing to participate in an activity that would result in a violation of a state or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation.*”

PAGA CLAIM

17. The PAGA Representatives Plaintiffs, Sydney Stone and Kelsei Fager (“Representative Plaintiffs”) also bring this case as a representative action seeking civil penalties for the State of California in their representative capacity, as provided by the PAGA to the extent permitted by law, as aggrieved employees who have been subjected to Defendant’s violations of the Labor Code. A true and correct copy of the May 4, 2021, notice establishing compliance with Labor

¹ It should be noted that Defendant’s “buddy system” rest and meal break policy had nothing to do with the Covid-19 staffing shortage waiver, which was temporarily implemented by the State of California on a temporary basis during the height of the pandemic. The temporary emergency waivers of the state’s mandated staff to patient ratios expired as of February 8, 2021. A.B. 394, California’s CNA-sponsored safe staffing standards are based on individual patient acuity, of which the RN ratios is the minimum and applies at all times including meals and breaks and unexcused absences.

Code § 2699.3 is attached hereto as **Exhibit A** and as amended on October 5, 2021, attached hereto as **Exhibit B**, demonstrates that Representative Plaintiffs are aggrieved employees and have standing to bring a representative action on behalf of the State of California and Labor and Workforce Development Agency (the “LWDA”) as private attorneys generals. No notice of cure by Defendant was provided and no notice of investigation has been received from the LWDA in the statutorily proscribed 65-day period since the filing and mailing of the notice to the LWDA and employer. Accordingly, Plaintiffs also file this Complaint as a “Representative Action” on behalf of the “Aggrieved Employees” as provided by the Code of Civil Procedure and as specifically permitted and authorized by Labor Code § 2699.3(a)(2)(C).

18. Representative Plaintiffs have complied with all requirements under Labor Code § 2699.3 for commencing a civil action under the PAGA and seek all recoverable penalties for Labor Code violations as permitted and proscribed by the PAGA, including remedies available under Labor Code §§ 2699, 2699.5, and 2933.3, among others. Specifically, Representative Plaintiffs, for themselves and on behalf of all current and formerly employed Aggrieved Employees, seek the penalties provided by Labor Code § 2699(f) for violations of, *inter alia*, Labor Code §§ 221, 226(a), 432.5, and 1102.5(c).

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action on behalf of themselves and all others similarly situated for violation of California’s wage and hour laws. Plaintiffs seek to represent a Class composed of and defined as follows:

“All persons who are or were formerly employed by Defendant, Scripps Health as regular, hourly nonexempt employees at any time in the State of California during the period four (4) years before the filing of the Complaint to the time of trial.”

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1 Plaintiffs also seek to certify a subclass of employees defined as:

2 **Unlaw Wage Deduction Subclass**

3 “Plaintiffs and all Class Members who were employed at any
4 time during the period four (4) years before the filing of the
5 Complaint to the time of trial and who had wages deducted from
6 their paychecks by Defendant without their voluntary, written
7 authorization or consent.”

8 Plaintiffs also seek to certify a Subclass of employees defined as:

9 **Wage Statement Subclass**

10 “Plaintiffs and all Class Members who at any time during the
11 four (4) years before the filing of the Complaint to the time of
12 trial who received a wage statement that inaccurately reflected
13 the legal entity name of the employer (“Scripps Health”) and
14 instead reflected an inaccurate employer name as the legal entity,
including but not limited to ‘Scripps Health Payroll.’”

15 Plaintiffs also seek to certify a Subclass of employees defined as:

16 **Illegal Conditions of Employment Subclass**

17 “Plaintiffs and all Class Members who were employed at any
18 time during the period four (4) years before the filing of the
19 Complaint to the time of trial and who were subjected to
20 Defendant’s mandatory policy referred to or known as the rest
21 and meal break ‘Buddy System’ under which they are/were
22 required to take their rest and/or meal breaks, regardless of
23 inadequate staffing numbers and the potential illegal
consequence of violating state or federal mandated nurse to
patient staffing ratios, or leaving a patient unattended.”

24 Plaintiffs also seek to certify a Subclass of employees defined as:

25 **Whistleblower Retaliation Subclass**

26 “Plaintiffs and all Class Members who were threatened with
27 disciplinary action, including termination for failure or refusal to
28 comply with Defendant’s mandatory rest and meal break policy
referred to or known as the rest and meal break ‘Buddy System’

1 regardless of inadequate staffing numbers and of the potential
2 illegal consequence of violating state or federal mandated nurse
3 to patient staffing ratios, or leaving a patient unattended.”

4 Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court, to
5 amend or modify the class description with greater specificity or further division into
6 subclasses or limitation to particular issues.

7 20. This action has been brought and may properly be maintained as a class action under
8 the provisions of section 382 of the Code of Civil Procedure because there is a well-defined
9 community of interest in the litigation and the proposed Class Members are easily ascertainable
10 and can be identified and located using Defendant’s payroll and personnel records.

11 21. Numerosity: Plaintiffs are informed and believe and based on such information and
12 belief allege that the potential members of the Class as defined are so numerous that joinder of all
13 the members of the Class is impracticable. The exact number of the members of the class is
14 presently unknown to Plaintiffs, but upon information and belief, Plaintiffs allege that the exact
15 number and specific identities of the members of the Class may be readily ascertained through
16 inspection of Defendant’s business records, but it is estimated that there are in excess of 1,000 class
17 members.

18 22. Commonality: There are questions of law and fact common to the Plaintiffs and to the
19 Class that predominate over any questions affecting only individual members of the Class. These
20 common questions of law and fact include, without limitation:

- 21 a.) Whether Defendant unlawfully deducted wages from Plaintiffs and the Class
22 Members in violation of Labor Code §221; and
23 b.) Whether Defendant failed to furnish accurately itemized wage statements in
24 violation of Labor Code Section 226(a); and
25 c.) Whether Defendant required Plaintiffs and the Class Members to agree to
26 illegal employment terms and conditions in violation of Labor Code Section
27 432.5; and
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- 1 d.) Whether Defendant engaged in unlawful Whistleblower Retaliation in
2 violation of Labor Code Section 1102.5(c) by threatening disciplinary action,
3 including termination for Plaintiff and Class Members' failure or refuse to
4 comply with their unlawful terms and conditions of Defendant's rest and meal
5 break policy commonly referred to or known as the rest and meal break 'Buddy
6 System;' and
7 e.) Whether Defendant is liable under the UCL for the foregoing stated violations
8 of the California Labor Codes; and
9 f.) Whether Defendant violated Business and Professions Code Sections 17200 *et*.
10 *seq.* of and whether such violations constitute a violation of fundamental public
11 policy; and
12 g.) Whether Plaintiffs and Class Members are entitled to equitable relief pursuant to
13 Business and Professions Code sections 17200, *et. seq.*; and
14 h.) Whether Representative Plaintiffs and similarly situated Aggrieved Employees
15 are entitled to recover civil penalties for violations of the Labor Code pursuant
16 to Labor Code Section 2698 *et seq.* (the "PAGA"); and
17 i.) The proper formula for calculating restitution, damages, applicable statutory
18 and/or civil penalties owed to Plaintiffs and the Class Members.
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20 23. Typicality: Plaintiffs' claims are typical of the claims of the Class. Defendant's
21 common course of conduct in violation of law as alleged herein has caused Plaintiffs and the
22 Class Members to sustain the same or similar injuries and damages. Plaintiffs' claims are
23 thereby representative of, and co-extensive with the claims of the Class.

24 24. Adequacy of Representation: Plaintiffs are members of the Class and do not have any
25 conflicts of interest with other Class Members. Plaintiffs will prosecute the case vigorously on
26 behalf of the Class. Counsel representing Plaintiffs is competent and experienced in litigating
27 employment class actions. Plaintiffs will fairly and adequately protect the interest of Class
28 Members.

1 25. Superiority of Class Action: A class action is superior to other available means for the
2 fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not
3 practicable, and questions of law and fact common to the Class predominate over any questions
4 affecting only individual members of the Class. Each putative Class Member has been damaged
5 and is entitled to recovery by reason of Defendant's illegal policies and practices. Class action
6 treatment will allow those similarly situated persons to litigate their claims in the manner that is
7 most efficient and economical for the parties and the judicial system. The nature of this action
8 and the nature of the laws available to the Plaintiffs make the use of the class action format
9 particularly efficient and the appropriate procedure to afford relief to the Plaintiffs and members
10 of the Class and Subclasses for the wrongs alleged herein, for the following reasons:

- 11 a.) The State of California, for which there is a named representative, has a public policy
12 which encourage the use of the class action device.
- 13 b.) By establishing a technique whereby, the claims of many individuals can be resolved at
14 the same time, the class suit both eliminates the possibility of repetitious litigation and
15 provides small claimants with a method of obtaining redress for claims which would
16 otherwise be too small to warrant individual litigation.
- 17 c.) This case involves a large corporate Defendants and a large number of individual class
18 members with many relatively small claims and common issues of law and fact.
- 19 d.) If each individual member of the Class was required to file an individual lawsuit, the
20 large corporate Defendant would necessarily gain an unconscionable advantage
21 because Defendant would be able to exploit and overwhelm the limited resources of
22 each individual member of the Class with Defendant's vastly superior financial and
23 legal resources.
- 24 e.) Requiring each individual member of the Class to pursue an individual remedy would
25 also discourage the assertion of lawful claims by the members of the Class who would
26 be disinclined to pursue action against Defendant because of an appreciable and
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justifiable fear of retaliation and permanent damage to their lives, careers and well-being.

f.) Proof of a common policy and practice or factual pattern, of which the member of the Class experienced, is representative of the Class and Subclasses herein and will establish the right of each of the members of the Class and such Subclasses to recover on the causes of action alleged herein.

g.) Absent class treatment, the prosecution of separate actions by the individual members of the Class, even if possible, would likely create:

(i) A substantial risk of each individual plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;

(ii) A multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;

(iii) Inconsistent or varying verdicts or adjudications with respect to the individual members of the Class and Subclasses against Defendant;

(iv) Potentially incompatible standards of conduct for Defendant;

(v) Potentially incompatible legal determinations with respect to individual members of the Class or Subclasses which would, as a practical matter, be dispositive of the interests of the other members of the Class or Subclasses who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Class to protect their interests;

(vi) The claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution, considering all of the concomitant costs and expenses attendant thereto.

h.) Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions.

1 i.) Judicial precedent urges trial courts, which have an obligation to consider the use of
2 innovative procedural tools to certify a manageable class, to be procedurally
3 innovative in managing class actions.

4 **FIRST CAUSE OF ACTION**
5 **UNLAWFUL WAGE DEDUCTIONS**
6 **In Violation of Lab. Cod. § 221**
7 **(As to Defendant and Does 1-25, Inclusive)**

8 26. Plaintiffs re-allege and incorporate by reference all of the foregoing paragraphs, as
9 though fully set forth herein.

10 27. California Labor Code § 221 was in full force and effect at all relevant times herein.

11 28. Pursuant to Labor Code § 221, states, “it shall be unlawful for any employer to collect
12 or receive from an employee any part of wages theretofore paid by said employer to said
13 employee.”

14 29. As alleged, on numerous occasion during the Class Period, after asserting it had
15 inadvertently overpaid wages “due to payroll calculation errors,” Defendant subsequently,
16 unilaterally deducted the overpayment of wages from Plaintiffs and Class Members paychecks
17 without their voluntary, expressed written authorization or consent.

18 30. Accordingly, Defendant, has unlawfully deducted wages from the Plaintiffs and Class
19 Members in violation of Labor Code §221.

20 31. Plaintiffs and the Class Members therefore seek to recover the unauthorized and
21 unlawfully deducted wages that were taken out of their paychecks during the Class Period, as well
22 as any applicable statutory penalties and interest thereon.

23 **SECOND CAUSE OF ACTION**
24 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
25 **In Violation of California Labor Code § 226 (a)**
26 **(As to Defendant and Does 1-25, Inclusive)**

27 32. Plaintiffs reallege and incorporate by reference all of the preceding and foregoing
28 paragraphs, as though fully set forth herein.

1 33. Defendants knowingly and intentionally failed to provide accurate itemized wage
2 statements that reflected the accurate legal name of the entity employer. As alleged supra, the
3 wage statements issued during the Class Period reflected the name of the employer as Scripps
4 Health Payroll. There is no such legal entity recognized or registered with the California
5 Secretary of State. The true name of the employer was at all relevant times, "Scripps Health."

6 34. Labor Code §226(a) states in pertinent part, that "[e]very employer shall, semimonthly
7 or at the time of each payment of wages, furnish each of his or her employees, either as a
8 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
9 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
10 gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j),
11 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
12 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
13 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
14 of the period for which the employee is paid, (7) the name of the employee and only the last four
15 digits of his or her social security number or an employee identification number other than a social
16 security number, (8) ***the name and address of the legal entity that is the employer*** and, if the
17 employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and
18 address of the legal entity that secured the services of the employer, and (9) all applicable hourly
19 rates in effect during the pay period and the corresponding number of hours worked at each hourly
20 rate by the employee..."

21 35. *Lab. Cod.* § 226 (e)(1) states that "[a]n employee suffering injury as a result of a
22 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
23 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
24 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
25 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
26 an award of costs and reasonable attorney's fees."
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1 36. *Lab. Cod.* § 226(e)(2)(B) states “[a]n employee is deemed to suffer injury for purposes
2 of this subdivision if the employer fails to provide accurate and complete information as required
3 by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
4 promptly and easily determine from the wage statement alone one or more of the following: (i)
5 The amount of the gross wages or net wages paid to the employee during the pay period or any of
6 the other information required to be provided on the itemized wage statement pursuant to items (2)
7 to (4), inclusive, (6), and (9) of subdivision (a); and (ii) Which deductions the employer made
8 from gross wages to determine the net wages paid to the employee during the pay period.”

9 37. *Lab. Cod.* § 226(e)(2)(C) defines “promptly and easily determine” to mean “a
10 reasonable person would be able to readily ascertain the information without reference to other
11 documents or information.”

12 38. *Lab. Cod.* § 226(e)(3) states that the phrase “knowing and intentional failure” “does
13 not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”

14 39. During the Class Period, Defendant has consistently, knowingly and willingly failed
15 to comply with *Lab. Cod.* § 226. As a matter of common policy and practice, Defendant
16 knowingly and willfully issued wage statements that failed to provide the complete and accurate
17 information of item no. 8 of section 226 (a) – namely, the “*true name of the legal entity that is*
18 *the employer.*”

19 40. Thus, the Plaintiffs and Class Members seek (i) injunctive relief pursuant to *Lab.*
20 *Code* § 226 (h), requiring Defendant to comply with Labor Code §§ 226(a) and (ii) the amounts
21 provided under Labor Code §§ 226(e) including the greater of all actual damages or \$50 for the
22 initial pay period in which a violation occurs and \$100 per employee for each violation in a
23 subsequent pay period, and (iii) attorneys’ fees and costs.

24
25 **THIRD CAUSE OF ACTION**

26 **REQUIRING EMPLOYEES TO AGREE TO**
27 **ILLEGAL TERMS AND CONDITIONS OF EMPLOYMENT**

28 **In Violation of Labor Code § 432.5**
 (As to Defendant and Does 1-25, Inclusive)

1 41. Plaintiffs re-allege and incorporate by reference all of the foregoing paragraphs, as
2 though fully set forth herein.

3 42. Labor Code Section 432.5 prohibits employers from requiring an applicant or an
4 employee to agree to any illegal employment term or condition.

5 43. Pursuant to a mandatory rest and meal break policy, commonly referred to as the rest
6 and meal break “Buddy System” Defendants coerced and forced and continue to coerce and force
7 Plaintiff and the Class Members to consent to and participate in an unlawful rest and meal break policy
8 that requires Plaintiff and the Class Members to take rest and meal breaks, regardless of whether taking
9 that break means leaving a patient unattended or violating state and federal laws and regulations setting
10 forth mandatory nurse to patient staffing ratios.

11 44. Plaintiffs and Class Members who complained about the unlawful consequences of
12 Defendant’s mandatory rest and meal break policy were informed that their failure or refusal to comply
13 face disciplinary action, including termination.

14 45. By forcing Plaintiffs and Class Members to participate in an illegal rest and meal break
15 policy that might require them to leave a patient unattended when no relief staff is available, also
16 exposes such individuals to the very real risk of losing their state licenses.

17 46. Plaintiffs and Class Members suffered and will continue to suffer damages in amounts
18 according to proof at the time of trial as a direct and proximate result of Defendant’s requiring them to
19 agree to their illegal employment terms and condition, and will seek to recover such damages as well as
20 their reasonable attorneys’ fees and costs of suit.

21 **FOURTH CAUSE OF ACTION**
22 **UNLAWFUL WHISTLEBLOWER RETALIATION**
23 **In Violation of California Labor Code § 1102.5 (c)**
24 **(As to Defendant and Does 1-25, Inclusive)**

25 47. Plaintiffs reallege and incorporate by reference all of the foregoing paragraphs, as
26 though fully set forth herein.

27 48. Labor Code Section 1102.5(c) provides, “*An employer or any person acting on behalf of*
28 *the employer, shall not retaliate against an employee for refusing to participate in an activity that would*

1 *result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or*
2 *federal rule or regulation.”*

3 49. As stated herein, Defendant’s unlawful rest and meal break policy and mandates force
4 Plaintiffs and the Aggrieved Employees to take rest and meal breaks, regardless of whether or not that
5 means leaving their patients unattended with no relief staff available to cover them is unlawful.

6 50. Plaintiffs and Class Members who have vocalized their opposition to the illegal
7 consequences of Defendant’s rest and meal break policy have been threatened with disciplinary action,
8 including termination if they fail to comply with the policy, even if it means violating California’s state
9 mandated staff to patient ratios. Defendant’s unlawful policy and threats of disciplinary action,
10 including termination, to those who fail to comply is a violation of Labor Code § 1102.5(c).

11 51. Wherefore, the Plaintiffs and the Class Members request judgment as is further set
12 forth herein below.

13 **SEVENTH CAUSE OF ACTION**
14 **UNFAIR BUSINESS PRACTICES**
15 **In Violation of Cal. Bus. & Prof. Code §§ 17200 et seq.**
16 **(As to Defendant and Does 1-25, Inclusive)**

17 52. Plaintiffs reallege and incorporate by reference all of the foregoing paragraphs, as
18 though fully set forth herein.

19 53. California Business and Professions Code Section 17200, et seq. prohibits unfair
20 competition in the form of any unlawful, unfair or fraudulent business act or practice.

21 54. California Business and Professions Code Section 17202 provides: “Notwithstanding
22 Section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
23 forfeiture, or penal law in case of unfair competition.”

24 55. California Business and Professions Code Section 17203 provides in relevant part
25 that the court may “restore to any person in interest any money or property, real or person, which
26 may have been acquired by means of such unfair competition.”

1 56. California Business and Professions Code Section 17203 also provides that any
2 person who meets the standing requirements of Section 17204 and complies with California Code
3 of Civil Procedure Section 382 may pursue representative claims for relief on behalf of others.

4 57. California Business and Professions Code Section 17204 allows any “person who has
5 suffered injury in fact and has lost money or property as a result of such unfair competition” to
6 prosecute a civil action for violation of the Unfair Business Practices Act.

7 58. Pursuant to Section 17204, Plaintiffs and other similarly situated employees are
8 entitled to enforce all applicable provisions of the Labor Code.

9 59. Beginning at an exact date unknown to Plaintiffs, but at least in the time period since
10 October 6, 2017, to the date of the filing of this lawsuit, Defendant has committed acts of unfair
11 competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair
12 business practices and acts described in the Complaint, including, but not limited to violations of
13 Labor Code Sections 221, 226(a), 432.5 and 1102.5(c) as alleged herein.

14 60. The violations of these laws and regulations, as well as of fundamental California
15 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
16 Business and Professions Code Section 17200 et seq.

17 61. The acts and practices described above constitute unfair, unlawful and fraudulent
18 business practices, and unfair competition, within the meaning of Business and Professions Code
19 Section 17200, et seq.

20 62. The acts and practices described above have allowed Defendant to gain an unfair
21 competitive advantage over law-abiding employers and competitors.

22 63. As a result of the acts and practices described herein, the Plaintiffs and the nonexempt
23 Class Members have been denied the lawful terms and conditions of employment accorded to
24 employees of law-abiding employers and competitors.

25 64. Injunctive relief is necessary and appropriate to prevent Defendant from repeating
26 their unlawful, unfair and fraudulent business acts and practices described herein and therefore
27 Plaintiffs will ask the Court to issue a preliminary and permanent injunction prohibiting Defendant
28

1 from continuing such unlawful acts, including unlawful wage deductions, from issuing inaccurate
2 wage statements, and requiring their employees to engage in illegal terms and conditions of
3 employment.

4 65. Pursuant to Section 17203 and/or any other applicable law, Plaintiffs seek an order
5 preventing Defendant from engaging in unlawful, unfair and fraudulent conduct and preventing
6 Defendant from profiting and benefiting from their illegal and wrongful acts.

7 66. Plaintiffs' success in this action will enforce important rights affecting the public
8 interest. Therefore, Plaintiffs sue on behalf of themselves and all other similarly situated Class
9 Members.

10 67. An award of attorneys' fees is appropriate pursuant to California Civil Code Section
11 1021.5 because 1) this action will confer a significant benefit upon a large class of persons; and 2)
12 there is a financial burden involved in pursuing this action; and 3) it would be against the interest
13 of justice to force Plaintiffs to pay attorneys' fees from any amount recovered in this action.

14
15 **EIGHTH CAUSE OF ACTION**
16 **VIOLATION OF THE PAGA**
17 **Cal. Lab. Cod. § 2698, et seq.**
(As to Defendant and Does 1-25, Inclusive)

18 68. Plaintiffs re-allege and incorporate by reference all of the foregoing paragraphs, as
19 though fully set forth herein.

20 69. Representative Plaintiffs, by their employment with Defendant and Defendant's
21 violations of the Labor Code as alleged herein, are aggrieved employees with standing to bring an
22 action under the PAGA. Representative Plaintiffs by virtue of **Exhibit A and Exhibit B attached**
23 hereto, have satisfied all prerequisites to serve as a representatives of the general public to enforce
24 California's labor laws including, without limitation, the penalty provisions identified in Labor
25 Code § 2699.5. Since the LWDA took no steps within the time period required to intervene and
26 because Defendant took no corrective action to remedy the allegations set forth above,
27 Representative Plaintiffs, as a representatives of the people of the State of California, will seek
28

any and all penalties otherwise capable of being collected by the Labor Commission the LWDA and/or the Division of Labor Standards Enforcement (“DLSE”). This includes violation of any of the following provisions of the California Labor Code, as is set forth in Labor Code § 2699.5, which states:

“The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, Subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7”

70. Representative Plaintiffs are informed and believe that Defendant has violated and continues to violate the provisions of the Labor Code as alleged herein.

71. Pursuant to Labor Code section 2699, any provision of the Labor Code that already provides a civil penalty to be assessed and collected by the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code or does not provide a civil penalty may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees pursuant to the procedures set forth in Labor Code, Section 2699.3.

1 72. Specifically the Representative Plaintiffs seek on behalf of themselves and all current
2 and formerly employed Aggrieved Employees, the civil penalties provided by Cal. Lab. Cod. §
3 2699(f) for violations of, *inter alia*, Labor Code §§ 221, 226(a), 432.5, and 1102.5(c).

4 73. Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged violation
5 of Labor Code section 226.

6 74. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The
7 civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

8 75. Representative Plaintiffs are informed and believe and thereon allege, that Defendant
9 has violated and continues to violate the foregoing alleged provisions of the Labor Code. Despite
10 mailing of **Exhibit A** at least 65-days prior to the filing of this Complaint, the LWDA has not
11 notified the Representative Plaintiffs that it intends to investigate the alleged Labor Code
12 violations identified in **Exhibit A** and as amended in **Exhibit B**, such that, by operation of law
13 Representative Plaintiffs, are entitled to pursue this cause of action under the PAGA. *See Lab.*
14 *Code 2699.3(a)(2)(A).*

15 **Damages**

16 76. Pursuant to California Labor Code § 2699, Representative Plaintiffs as the personal
17 representatives of the Aggrieved Employees will and do seek to recover from Defendant civil
18 penalties for each and every violation shown to exist or have occurred during the PAGA liability
19 period, in the amount of a hundred dollars (\$100) for each Aggrieved Employee per pay period for
20 the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period
21 for each subsequent violation; and

22 77. Attorneys' fees and costs pursuant to Labor Code § 2699(g)(1) and any other applicable
23 statute.

24 78. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
25 Employees, whether a part of this action or not. Further, a PAGA claim needs no certification to
26 proceed with recovery. *See Arias v. Superior Court* (2009) 46 Cal.4TH 969, 970-975.

79. Any said penalties recovered will be distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California and the LWDA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs as Class Representative and as PAGA Representatives, each on their own behalf, and on behalf of the similarly situated Class Members and the PAGA Aggrieved Employees, pray for relief as follows:

On the Class Claims

1. For an order, pursuant to California Code of Civil Procedure Section 382, certifying the First through Fifth causes of action as a class action, on behalf of the Class and Subclass Members who performed work in the State of California within the Class Period and that notice of the pendency of the class action be provided to members of the Class and Subclasses.

2. For an order appointing Plaintiffs as Class Representatives and Plaintiffs' attorney as Class Counsel.

3. For an award for the nonexempt Plaintiffs and nonexempt Class and Subclass Members for appropriate equitable relief to remedy Defendant's violations of California law, including, but not necessarily limited to, an order enjoining Defendant from continuing its unlawful practices;

4. For an award of any and all appropriate California statutory penalties, in favor of the nonexempt Plaintiffs and nonexempt Class and Subclass Members, according to proof at time of trial;

5. For an award of damages and statutory penalties in favor of the nonexempt Plaintiffs and the nonexempt Class and Subclass Members pursuant to Labor Code Section 226(a) and 226.3 according to proof;

6. For a declaratory judgment that Defendant has violated Labor Code Section 432.5, 1102.5(c) and California Business and Professions Code sections 17200 et seq. as a result of the aforementioned violations of the Labor Code and of California public policy.

1 7. For a permanent and mandatory injunction prohibiting Defendant, its officers, agents,
2 employees, affiliated companies and all those working in concert with them from committing
3 future violations of the laws and public policies described herein.

4 8. Pre-judgment and post-judgment interest, as provided by California law;

5 9. For award of reasonable attorneys' fees as provided by California Labor Code sections
6 226 (h) and 1021.5.

7 10. For all costs of suit, and

8 11. For such other and further equitable relief as this Court may deem just and proper.

9 **Upon the PAGA Cause of Action**

10 12. That this action be maintained as a PAGA Representative Action and Plaintiffs and
11 their counsel be provided with all enforcement capabilities as if this action were brought by the
12 DLSE.

13 13. For civil penalties pursuant to statute as set forth in Labor Code §2699(f)(2) for
14 Defendant's violations of Labor Code §§ 221, 226(a), 432.5, and 1102.5(c).

15 14. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code
16 §2699(g) and any other applicable statute; and

17 15. For such other and further relief the Court may deem just and proper.

18
19 DATED: October 7, 2021

SW EMPLOYMENT LAW GROUP, APC

20
21 By: 

Jacob Whitehead, Esq.

Meghan Higday, Esq.

Attorneys for Plaintiffs

And all others similarly situated

EXHIBIT A



May 4, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

First Class Mail

Mr. Chris Van Gorder, CEO
Scripps Health
10140 Campus Point Drive
San Diego, California 92121

Via Certified Mail

Bradley S. Ellis
Registered Agent for
Scripps Health
10140 Campus Point Drive
San Diego, California 92121

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiffs, Sydney Stone and Kelsei Fager (collectively "Plaintiffs") have retained Whitehead Employment Law to represent them and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of Scripps Health, a California nonprofit operating in California and Does 1-25 (collectively hereinafter "Defendants") regarding claims of violations of the California Labor Code, Industrial Welfare Commission Wage Orders, and other applicable employment laws.

Defendants currently or formerly employed Plaintiffs and other Aggrieved Employees, who work or have worked as registered nurses, charge nurses, certified nurse assistants, doctors' assistants, technicians, therapists, clerical staff, janitorial staff, or other similarly situated employees (the "Covered Positions"). This notice formally serves to inform Defendants of Plaintiffs' intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendant' failure to provide accurate wage statements, and illegal deductions from wages.

As further detailed below, Defendants violated the provisions of California's Labor Code Sections 221 and 226(a).

Plaintiff Stone has been employed by Defendants from on or around June of 2019 and currently is still employed as a nurse practitioner. Plaintiff Fager has been employed by Defendants from on or around January of 2019 and currently is still employed as a nurse practitioner. Plaintiffs work as nurse practitioners in Defendants' Labor and Delivery Unit and occasionally float to the ICU and other departments.

During the relevant statutory period, during approximately the end of March of 2021, Defendants' claim to have overpaid Plaintiffs and the Aggrieved Employees. Defendants claimed to have paid Plaintiffs and the Aggrieved Employees double time for all of the listed time during the

pay period. Defendants deducted the overpayment from Plaintiffs and the Aggrieved Employees' paychecks without obtaining voluntary written authorization from Plaintiffs and the Aggrieved Employees. Defendants' have routinely made deductions from Plaintiffs and the Aggrieved Employees' wages due to payroll errors without first obtaining voluntary written authorization.

During the relevant statutory period, Defendants' wage statements did/does not list the Defendants' legal name. Plaintiffs and the Aggrieved Employees' wage statements list "Scripps Health Payroll" instead of "Scripps Health." There is no legal entity registered with the California Secretary of State for "Scripps Health Payroll," instead Plaintiffs and the Aggrieved Employees are employed by Defendant "Scripps Health."

Plaintiffs are informed and believe that the said violations are ongoing, systematic and uniform. Plaintiffs intend to bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Illegal Deduction from Wages

At all times relevant, Labor Code § 221 states, "[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

As indicated above, Defendants illegally deducted money from Plaintiffs and the Aggrieved Employees' wages paid by Defendants. Defendants at no time obtain voluntary written authorization for the deduction from Plaintiffs and the Aggrieved Employees.

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants' derelict record keeping and unlawful business and compensation practices, Plaintiffs and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226(a) requires Defendants to "furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned,

¹ Without limitation, Plaintiffs, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

(6) the inclusive dates of the period for which the employee is paid, ...(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 hourly rate by the employee."

As indicated above, Defendants did not list their legal name on their wage statements. Thus, due to Defendants' policies and practices, the legal name of the Defendant is / was not reflected on wage statements. In failing to accurately set forth the name of the employer, Defendants violated the wage statement requirements of Labor Code § 226.

Conclusion

In sum, as has been factually alleged, Defendants violated among other statutes and regulations Labor Code § 221 and 226(a). Plaintiffs on their own behalf and on behalf of all similarly situated Aggrieved Employees, seek to recover any and all applicable statutory penalties, interest as provided by California law and attorneys' fees and civil penalties as provided for under Labor Code 2699.

Plaintiffs request the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiffs request the agency inform them if it does not intend to investigate these violations so that they may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW

A handwritten signature in dark ink, appearing to read "Meghan N. Higday", is written over the typed name.

Meghan N. Higday

EXHIBIT B



October 5, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

First Class Mail

Mr. Chris Van Gorder, CEO
Scripps Health
10140 Campus Point Drive
San Diego, California 92121

Via Certified Mail

Bradley S. Ellis
Registered Agent for
Scripps Health
10140 Campus Point Drive
San Diego, California 92121

First Class Mail

Jackie Seiter, Esq.
Ames Karanjia, LLP
Counsel for Scripps Health
2535 Truxtun Road, Suite 206
San Diego, CA 92106

Re: *First Amended Notice Pursuant to the Private Attorneys General Act,
California Labor Code § 2699.3 (the "PAGA")*

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiffs, Sydney Stone and Kelsei Fager ("Plaintiffs") have retained Whitehead Employment Law to represent them and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of Scripps Health, a California nonprofit operating in California and Does 1-25 (collectively hereinafter "Defendants") regarding claims of violations of the California Labor Code, Industrial Welfare Commission Wage Orders, and other applicable employment laws.

Defendants currently or formerly employed Plaintiffs and other Aggrieved Employees, who work or have worked as registered nurses, charge nurses, certified nurse assistants, doctors' assistants, technicians, therapists, clerical staff, janitorial staff, or other similarly situated employees (the "Covered Positions"). This notice formally serves to inform Defendants of Plaintiffs' intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendant' failure to provide accurate wage statements, and illegal deductions from wages.

As further detailed below, Defendants violated the provisions of California's Labor Code Sections 221, 226(a), 432.5 and 1102.5.

Plaintiff Stone has been employed by Defendants from on or around June of 2019 and currently is still employed as a nurse practitioner. Plaintiff Fager has been employed by Defendants from on or around January of 2019 and currently is still employed as a nurse practitioner. Plaintiffs work as nurse practitioners in Defendants' Labor and Delivery Unit and occasionally float to the ICU and other departments.

During the relevant statutory period, during approximately the end of March of 2021, Defendants' claim to have overpaid Plaintiffs and the Aggrieved Employees. Defendants claimed to have paid Plaintiffs and the Aggrieved Employees double time for all of the listed time during the pay period. Defendants deducted the overpayment from Plaintiffs and the Aggrieved Employees' paychecks without obtaining voluntary written authorization from Plaintiffs and the Aggrieved Employees. Defendants' have routinely made such unlawful deductions from Plaintiffs and the Aggrieved Employees' wages due to payroll errors without first obtaining voluntary written authorization.

Moreover, during the relevant statutory period, in order to purportedly comply with rest and meal break requirements, Defendant implemented a "buddy system" policy, pursuant to which, plaintiffs are mandatorily required to go on breaks regardless of whether that means abandoning and leaving patients unattended by relief staff. Plaintiffs and those similarly situated who complained that to abandon a patient in the manner mandated by Defendant is a violation of state regulations¹ and posed a grave threat to their state licensing status were threatened with termination if they did not comply. It should be noted that Defendant's buddy system policy had nothing to do with the Covid-19 staffing shortage waiver, implemented on a temporary basis during the height of the pandemic in California. The temporary emergency waivers of the states mandated staff to patient ratios expired as of February 8, 2021. On the contrary, Defendant's unlawful buddy system policy, which was implemented for the sole purpose of enforcing Scripps rest and meal break policies and has nothing whatsoever to do with emergency staffing shortages, is currently in force as of October 5, 2021.

Moreover, during the relevant statutory period, Defendants' wage statements did/does not list the Defendants' legal name on the check stubs. Plaintiffs and the Aggrieved Employees' wage statements list "Scripps Health Payroll" instead of "Scripps Health." There is no legal entity registered with the California Secretary of State as "Scripps Health Payroll," instead Plaintiffs and the Aggrieved Employees are employed by Defendant, "Scripps Health."

Plaintiffs are informed and believe that the foregoing described violations are ongoing, systematic and uniform. Plaintiffs intend to bring an action against Defendants under the PAGA to recover civil penalties as provided by California law.²

¹ A.B. 394, California's CNA-sponsored safe staffing standards are based on individual patient acuity, of which the RN ratios *is the minimum and applies at all times including meals and breaks and unexcused absences.*

² Without limitation, Plaintiffs, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,

Illegal Deduction from Wages

At all times relevant, Labor Code § 221 states, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

As indicated above, Defendants illegally deducted money from Plaintiffs and the Aggrieved Employees’ wages paid by Defendants. Defendants at no time obtain voluntary written authorization for the deduction from Plaintiffs and the Aggrieved Employees.

Unlawfully Requiring Employees to Agree to Terms of Employment Prohibited by Law

Pursuant to Labor Code § 432.5 “No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is **known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.**” (*emphasis added*)

As detailed above, Defendant has implemented and mandated an unlawful policy that if followed, would force Plaintiffs and the Aggrieved Employees to unlawfully abandon their patients and leave them unattended in order to take rest and meal breaks. Plaintiffs and multiple of their colleagues have complained about the policy, and have stated it not only breaks state laws governing staff to patient ratios – but, also poses a threat to their state license. Defendant has threatened that anyone who fails or refuses to comply with their unlawful policy will be terminated. Defendant is systematically violating Labor Code § 432.5.

Unlawful Whistleblower Retaliation

Labor Code § 1102.5(c) provides: *An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.*

Defendant’s policy and mandates that force Plaintiffs and the Aggrieved Employees to take rest and meal breaks, regardless of whether or not that means leaving their patients unattended with no relief staff available to cover them is unlawful. Plaintiffs and Aggrieved Employees who have vocalized opposition to the policy have been threatened with termination if they fail to comply, even if it means violating California’s state mandated staff to patient ratios. Defendant’s unlawful policy and threats of termination to those who fail to comply is a violation of Labor Code § 1102.5(c).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants’ derelict record keeping and unlawful business and compensation practices, Plaintiffs and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226(a) requires Defendants to “furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned,

1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

(6) the inclusive dates of the period for which the employee is paid, ...(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 hourly rate by the employee."

As indicated above, Defendants did not list their legal name on their wage statements. Thus, due to Defendants' policies and practices, the legal name of the Defendant is / was not reflected on wage statements. In failing to accurately set forth the name of the employer, Defendants violated the wage statement requirements of Labor Code § 226.

Conclusion

In sum, as has been factually alleged, Defendant has violated Labor Code § 221, 226(a), 432.5 and 1102.5(c). Plaintiffs on their own behalf and on behalf of all similarly situated Aggrieved Employees, seek to recover any and all applicable civil penalties as permitted under the PAGA, and reasonable attorneys' fees as provided for under Labor Code 2699.

Plaintiffs request the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiffs request the agency inform them if it does not intend to investigate these violations so that they may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW


Meghan N. Higday

MNH/dlp