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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 8/6/2021 1:30 PM
By: Rowena Esquerro, Deputy

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

SHARON MORRIS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

COMMUNITY HOSPITAL OF THE
MONTEREY PENINSULA, a California
nonprofit corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 21CV001953

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) VIOLATION OF LABOR CODE §§ 201-203**
- (2) VIOLATION OF LABOR CODE § 2698, ET SEQ., THE PRIVATE ATTORNEYS GENERAL ACT**

DEMAND OVER \$25,000

Complaint Filed: June 16, 2021
Trial Date: None

1 Plaintiff Sharon Morris (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendant Community Hospital of the
3 Monterey Peninsula (“Defendant”), and Does 1-50 (collectively, “Defendants”), as an individual
4 and on behalf of all other similarly situated current and former employees of Defendants for
5 damages and penalties under the California Labor Code for failure to pay sick pay at the regular
6 rate of pay, as follows:

7 **INTRODUCTION**

8 1. This Complaint is within the Court’s jurisdiction under California Labor Code
9 §§ 201-203, 246, and 2698, *et seq.*, and the California Industrial Welfare Commission’s (“IWC”)
10 Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against employees of Defendants.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 jointly and severally have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to pay sick pay at the regular rate of pay.

16 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
17 engaged in, among other things a system of willful violations of the California Labor Code and
18 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
19 knowingly deny employees the above stated rights and benefits.

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of the California Labor Code
22 §§ 201-203, 246, and 2698, *et seq.*

23 6. Venue is proper in Monterey County because Defendant is located in and does
24 business in Monterey County, and Plaintiff worked at Defendant’s facilities in Monterey County.

25 **PARTIES**

26 7. Plaintiff is a former employee of Defendant. Plaintiff was employed by
27 Defendant from on or about September 28, 1987, until on or about May 6, 2021, as a Chemical
28 Dependency Counselor. Throughout her employment with Defendant, Plaintiff was a non-

1 exempt employee.

2 8. During her employment with Defendant, Plaintiff was paid non-discretionary
3 incentive wages, including without limitation, shift differentials. During her employment with
4 Defendant, Plaintiff was also paid wages for sick time.

5 9. Plaintiff was and is the victim of the policies, practices, and customs of
6 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
7 by California Labor Code §§ 201-203, 246, and 2698, *et seq.*, and the applicable IWC Wage
8 Orders.

9 10. Plaintiff is informed and believes and based thereon alleges that Defendant was
10 and is a California nonprofit corporation doing business in the State of California. Defendant is
11 a hospital that provides medical and healthcare services in Monterey County.

12 11. Plaintiff is informed and believes and based thereon alleges that at all times herein
13 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
14 partnerships, licensed to do business and actually doing business in the State of California.

15 12. As such, and based upon all the facts and circumstances incident to Defendants'
16 business in California, Defendants are subject to California Labor Code §§ 201-203, 246, and
17 2698, *et seq.*, and the IWC Wage Orders.

18 13. Plaintiff does not know the true names or capacities, whether individual, partner
19 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
20 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
21 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
22 based thereon alleges that each of said fictitious Defendants were responsible in some way for
23 the matters alleged herein and proximately caused Plaintiff and members of the general public
24 and class to be subject to the illegal employment practices, wrongs and injuries complained of
25 herein.

26 14. At all times herein mentioned, each of said Defendants participated in the doing
27 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
28 Defendants, and each of them, were the agents, servants and employees of each of the other

Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

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

16. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

17. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, of the following Class: All non-exempt employees of Defendants in the State of California who were paid non-discretionary incentive wages, including without limitation, shift differentials, and sick pay in the same workweek, and whose employment ended (either voluntarily or involuntarily) at any time from June 16, 2018, through the present (the "Class").

19. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members

of the Class is readily ascertainable by review of Defendants' records, including payroll records. Plaintiff alleges that Defendants failed to pay Class Members sick pay at the regular rate of pay in violation of Labor Code §§ 201-203 and 246.

20. **Adequacy of Representation:** The named 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 able to fully and adequately represent the Class and individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

21. Defendants uniformly administered a corporate policy and practice of failing to pay employees sick pay at their regular rate of pay, in violation of Labor Code §§ 201-203 and 246.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants' failure to pay sick pay at their regular rate of pay in violation of Labor Code §§ 201-203 and 246.

23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the Class Members. As with other Class Members, Plaintiff was a non-exempt employee and was paid hourly. Plaintiff routinely earned non-discretionary incentive wages, including without limitation shift differential wages, such as "PMDiff" wages, that increased her regular rate of pay. However, whenever sick pay was paid to Plaintiff, it was paid at Plaintiff's base rate of pay rather than the correct, higher regular rate of pay that included any non-discretionary incentive wages. To date, Plaintiff has yet to receive the underpaid wages owed to her. As such, Plaintiff is a member of the Class and has suffered the alleged violations of California Labor Code §§ 201-203 and 246.

24. The California Labor Code and upon which Plaintiff bases these claims is broadly remedial in nature. These laws and labor standards serve an important public interest in

1 establishing minimum working conditions and standards in California. These laws and labor
2 standards protect the average working employee from exploitation by employers who may seek
3 to take advantage of superior economic and bargaining power in setting onerous terms and
4 conditions of employment.

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

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

24 27. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal employee compensation described herein is unlawful and creates an entitlement to
26 recovery by the Plaintiff and the Class identified herein, in a civil action, for all applicable
27 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
28 of California Labor Code §§ 218.5 and 1194, and Code of Civil Procedure § 1021.5.

1 28. Proof of a common business practice or factual pattern, which the named Plaintiff
2 experienced and is representative of, will establish the right of each of the members of the Class
3 to recovery on the causes of action alleged herein.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE §§ 201-203**

6 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

7 29. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
8 though fully set forth herein.

9 30. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees be
10 “calculated in the same manner as the regular rate of pay for the workweek in which the
11 employee uses paid sick time, whether or not the employee actually works overtime in that
12 workweek.”

13 31. Labor Code § 246(l)(2) further provides that paid sick time for non-exempt
14 employees be “calculated by dividing the employee’s total wages, not including overtime
15 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
16 of employment.”

17 32. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
18 rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive wages,
19 including without limitation, shift differential wages, thereby increasing their regular rates of pay
20 to amounts that were higher than their base rates of pay. However, whenever sick pay was paid
21 to Plaintiff and Class Members, it was paid at their base rates of pay rather than the correct,
22 higher regular rates of pay, as required under Labor Code § 246.

23 33. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
24 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor
25 Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such
26 failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class
27 Members whose employment has separated are entitled to waiting time penalties pursuant to
28 Labor Code §§ 201-203.

1 34. Such a pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation as described herein is unlawful and creates an entitlement to
3 recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance
4 of the full amount of damages and penalties, attorneys' fees, and costs of suit according to the
5 mandate of California Labor Code §§ 201-203, 218.5, and 1194.

6 **SECOND CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

8 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

9 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
10 though fully set forth herein.

11 36. Plaintiff brings this cause of action as a proxy for the State of California and in
12 this capacity, seeks penalties on behalf of all Aggrieved Employees from June 4, 2020, through
13 the present, for Defendants' violations of Labor Code §§ 201-203, and 246. As alleged above,
14 Defendants, as a matter of policy and practice, failed to pay Plaintiff and other Aggrieved
15 Employees sick pay at the regular rate of pay.

16 37. Because of Defendants' above-stated Labor Code violations, Plaintiff is an
17 "aggrieved employee" as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause
18 of action on behalf of the State of California for violations committed against all similarly
19 situated Aggrieved Employees of Defendant.

20 38. On or about June 4, 2021, Plaintiff sent written notice to the California Labor &
21 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-
22 203 and 246, pursuant to the PAGA. As of the date of the filing of this Complaint, the LWDA
23 has not responded to Plaintiff's written notice. In addition to the LWDA, Plaintiff also sent
24 written notice of Defendants' violations of Labor Code §§ 201-203 and 246 to Defendant via
25 certified mail, pursuant to Labor Code § 2699.3.

26 39. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
27 applicable civil penalties for Defendants' violations of Labor Code §§ 201-203 and 246, for the
28 time period described above, on behalf of herself and all other Aggrieved Employees.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
3 that this suit is brought against Defendants, jointly and severally, as follows:

- 4 1. For an order certifying the proposed Class;
- 5 2. For an order appointing Plaintiff as the representative of the Class as described
6 herein;
- 7 3. For an order appointing counsel for Plaintiff as Class counsel;
- 8 4. Upon the First Cause of Action, for unpaid wages and/or penalties pursuant to
9 California Labor Code §§ 201-203, and for costs and attorneys' fees;
- 10 5. Upon the Second Cause of Action, for the full amount of civil penalties pursuant
11 to California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;
- 12 6. On all causes of action, for attorneys' fees and costs as provided by California
13 Labor Code §§ 218.5, 1194, and 2699, and Code of Civil Procedure § 1021.5; and
- 14 7. For such other and further relief as the Court may deem just and proper.

15
16 DATED: August 6, 2021

DIVERSITY LAW GROUP P.C.

17 By: 

18 Larry W. Lee

Mai Tulyathan

19 Attorneys for Plaintiff, the Class, and Aggrieved
20 Employees

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

On August 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:

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.


Erika Mejia