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Attorneys for Plaintiff Maritza Mora, on behalf of herself
and all other aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

MARITZA MORA, on behalf of herself and
all other aggrieved employees,

Plaintiff,

v.

SAN ANTONIO REGIONAL HOSPITAL,
a California Corporation; and DOES 1
Through 10, Inclusive,

Defendants.

Case No. **CIV SB 2127431**

**PRIVATE ATTORNEYS GENERAL ACT
("PAGA") COMPLAINT FOR CIVIL
PENALTIES FOR FAILURE TO PROVIDE:**

1. MINIMUM WAGES

2. OVERTIME WAGES

3. MEAL PERIODS

4. REST PERIODS

5. SICK PAY WAGES

6. ACCURATE WAGE STATEMENTS

7. TIMELY FINAL WAGES

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 16 2021

BY *Felix Garza*
FELIX GARZA, DEPUTY

NATURE OF CLAIM

1. Plaintiff MARITZA MORA (“Plaintiff”) brings this representative action under the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*, against Defendant SAN ANTONIO REGIONAL HOSPITAL and Does 1 through 10 (collectively, “Defendants”) to recover civil penalties arising out of Defendants’ failure to provide: minimum and overtime wages, including for standby time and due to rounding; meal and rest periods; sick pay; accurate, itemized wage statements showing total hours worked and accurate gross and net wages earned, due to mathematical miscalculations; and timely final wages.

2. Plaintiff gave written notice of these claims to the California Labor and Workforce Development Agency (“LWDA”) on July 12, 2021 pursuant to Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of her Notice. A true and correct copy of this Notice is attached as **Exhibit 1**. Plaintiff seeks PAGA civil penalties as a representative of the State of California and has standing as an aggrieved non-exempt employee. Plaintiff seeks to represent all current and former non-exempt hourly employees of Defendants who suffered one or more of the violations alleged (“aggrieved employees”) during the “PAGA Period” (one year and 65 days before this complaint filing date until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

PARTIES

3. Plaintiff MARITZA MORA is a San Bernardino resident who worked for Defendants as a non-exempt Nursing Assistant from 1990 until August 1, 2021.

4. Defendant SAN ANTONIO REGIONAL HOSPITAL is a California corporation doing business in Upland, California, within San Bernardino County. Defendant is an acute care hospital that employs more than 2,500 employees and serves over 200,000 patients each year.

5. Does 1 through 10, inclusive, are persons or entities whose true names and identities are now unknown to Plaintiff, and who are sued by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when known. Plaintiff is informed and believes each Doe defendant is the agent, representative, or parent or subsidiary corporation of SAN ANTONIO REGIONAL HOSPITAL, is responsible in some manner for the occurrences,

1 events, transactions, and injuries alleged, and that harm suffered by Plaintiff and other aggrieved
2 employees was proximately caused by them in addition to SAN ANTONIO REGIONAL
3 HOSPITAL.

4 6. Plaintiff alleges each Defendant, including the Doe defendants, acted in concert
5 with each and every other Defendant, intended to and did participate in the events, acts, practices,
6 and courses of conduct alleged, and was a proximate cause of damage and injury to Plaintiff.

7 7. At all relevant times each Defendant was the agent or employee of each of the
8 other Defendants and was acting within the course and scope of such agency or employment.

9 **JURISDICTION AND VENUE**

10 8. Venue as to each Defendant is proper in this judicial district. Code of Civil
11 Procedure § 395. Defendants conduct business in San Bernardino County and each Defendant is
12 within this Court's jurisdiction for service of process. The unlawful acts alleged directly affect
13 Plaintiff and aggrieved employees within San Bernardino County. Plaintiff's claims raise no
14 federal question and PAGA civil penalty actions are not subject to federal jurisdiction.

15 **FACTUAL ALLEGATIONS**

16 9. During the PAGA Period, Plaintiff and other aggrieved employees were employed
17 by Defendants in California, and Defendants conducted business in California.

18 10. During the PAGA Period, Defendants rounded Plaintiff's and other aggrieved
19 employees' hours worked to the nearest tenth of an hour and paid them based on rounded, rather
20 than actual time. Plaintiff and other aggrieved employees were required to clock in by a scheduled
21 start time to receive reports on patients from the prior shift's employees. Plaintiff would often
22 clock in a few minutes early to ensure she was not late. Plaintiff and other aggrieved employees
23 would not clock out earlier than their scheduled end time, but sometimes clocked out a few
24 minutes late to finish required work. Defendants' rounding policy was not neutral and resulted
25 over time in Defendants failing to pay Plaintiff and other aggrieved employees for all time under
26 their control.

27 11. During the PAGA Period, Defendants did not pay at least minimum wage for
28 standby time. When on standby, Plaintiff and other aggrieved employees were required to answer

1 their phones immediately. If they did not, they would be reprimanded or written up. If they were
2 called into work, they were required to arrive at the hospital within 30 to 45 minutes. With no
3 traffic, it took Plaintiff approximately 30 minutes to drive from her home to the hospital. With
4 traffic, it took considerably longer. Plaintiff could not leave her home or be away from her home
5 for the duration of her time on standby, nor could she make personal phone calls without risking
6 missing a call from Defendants, which would result in discipline.

7 12. During the PAGA Period, Plaintiff and other aggrieved employees typically
8 worked three 12-hour shifts per week. Records reflect that Defendants paid Plaintiff and other
9 aggrieved employees regular hourly wages for all hours worked up to 12 in one day and double-
10 time wages for hours worked over 12 in one day. Defendants did not pay Plaintiff and other
11 aggrieved employees overtime wages as required by Labor Code section 510 for hours worked
12 over eight in one day or forty in one week. On information and belief, Plaintiff and other
13 aggrieved employees were not subject to a collective bargaining agreement pursuant to Labor
14 Code section 514 that would allow Defendants to avoid the overtime pay obligations of Labor
15 Code section 510. When Defendants did pay overtime and double-time wages, they were
16 underpaid because Defendants failed to incorporate all applicable compensation, including
17 “Weekend Differentials,” into employees’ regular rates to calculate these wages.

18 13. During the PAGA Period, Defendants had a policy and practice of failing to
19 provide duty-free, uninterrupted, first meal periods of at least 30 minutes before the end of the
20 fifth hour of work and second meal periods before the end of the tenth hour of work. Rather,
21 Defendants often provided Plaintiff and other aggrieved employees their first meal period late
22 and did not provide a second meal period to these employees. First meal periods were often taken
23 late because Plaintiff and other aggrieved employees were required to monitor patients as patients
24 ate lunch. For example, when an employee began work at 7:00 a.m., and patients ate from 12:00
25 p.m. to 1:00 p.m., the employee was unable to take a lunch break until after 1:00 p.m., or after
26 the end of the sixth hour of work.

27 14. During the PAGA Period, Defendants have a policy and practice of failing to
28 provide uninterrupted 10-minute rest periods for every four hours or major fraction thereof

1 worked. Plaintiff and other aggrieved employees were often unable to take more than one rest
2 period per day despite typically working 12 hours, which requires three rest periods be authorized
3 and permitted. For example, Plaintiff and other aggrieved employees were often called back to
4 work when they were attempting to take rest periods, including being summoned over an
5 intercom.

6 15. During the PAGA Period, Defendants failed to pay meal and rest period premium
7 wages at the correct regular rate of pay on days on which a compliant meal or rest period was not
8 provided.

9 16. During the PAGA Period, Defendants failed to list total hours worked by
10 employees in their wage statements. Rather, Defendants listed total hours worked as 0.00 on all
11 of Plaintiff's wage statements, and the total hours worked could not be easily discerned by adding
12 the hours listed under different pay categories, as some were pay for hours worked and others
13 were not. Additionally, because Defendants mathematically miscalculated Plaintiff's and other
14 aggrieved employees' wages, the gross and net wages earned were not accurately reflected in
15 employees' wage statements.

16 17. During the PAGA Period, Defendants paid "PTO-sick" pay at Plaintiff's and other
17 aggrieved employees' base hourly rates and failed to incorporate all applicable compensation
18 into the regular rate for the purpose of calculating this pay.

19 18. During the PAGA Period, because Defendants failed to pay all earned wages to
20 Plaintiff and other aggrieved employees, Defendants failed to timely pay all final wages due to
21 these employees.

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **PAGA Civil Penalties for Failure to Pay Minimum Wages (By Plaintiff and Aggrieved Employees against Each Defendant)**

25 19. Plaintiff incorporates the preceding paragraphs of this Complaint.

26 20. By failing to pay at least minimum wages for all hours worked, including for
27 standby time, and due to rounding, Defendants violated Labor Code section 1194 and the
28 "Minimum Wages" section of applicable IWC Wage Order(s).

21. Section 2699.3(a) applies to any alleged violation of Labor Code sections 1194 and 1194.1 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

22. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

SECOND CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Pay Overtime Wages
(By Plaintiff and Aggrieved Employees against Each Defendant)**

23. Plaintiff incorporates the preceding paragraphs of this Complaint.

24. Defendants failed to pay overtime wages for hours worked in excess of eight (8) in one day or forty (40) in one week and double-time wages for hours worked over twelve (12) per day or as otherwise required by law. By failing to pay overtime and double-time wages, and by failing to pay these wages at the correct rates, Defendants violated Labor Code sections 510 and 1194 and the “Hours and Days of Work” section of applicable IWC Wage Order(s). Defendants were not exempt from Labor Code section 510 by Labor Code section 514.

25. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

26. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

THIRD CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Required Meal Periods
(By Plaintiff and Aggrieved Employees against Each Defendant)**

27. Plaintiff incorporates the preceding paragraphs of this Complaint.

28. By failing to: provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work; provide second duty-free meal periods of at least thirty (30) minutes for shifts of ten hours or more, which began before the tenth hour of work; and pay premium wages of one (1) hour of pay at employees’ regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated the provisions of Labor Code sections 226.7 and 512, and the “Meal Periods” section of applicable IWC Wage Order(s).

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29. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

FOURTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Required Rest Periods
(By Plaintiff and Aggrieved Employees against Each Defendant)**

30. Plaintiff incorporates the preceding paragraphs of this Complaint.

31. By failing to authorize and permit Plaintiff and other aggrieved employees a paid rest period of at least 10 minutes for every four hours or major fraction worked per day, and by failing to provide premium wages at the regular rate of compensation when not permitted or authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and the “Rest Period” section of applicable IWC Wage Order(s).

32. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

FIFTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Sick Pay
(By Plaintiff and Aggrieved Employees against Each Defendant)**

33. Plaintiff incorporates the preceding paragraphs of this Complaint.

34. Sick pay must be compensated at the employee’s regular rate of pay, either for the workweek in which the paid leave was taken, or as determined by averaging over a 90-day period. Labor Code § 246(l). Under either method, the regular rate is calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked. Labor Code § 246(l).

35. By failing to pay Plaintiff and other aggrieved employees for sick pay at the correct rate, Defendants willfully violated the provisions of Labor Code section 246.

36. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

SIXTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Accurate Wage Statements
(By Plaintiff and Aggrieved Employees against Each Defendant)**

37. Plaintiff incorporates the preceding paragraphs of this Complaint.

38. Employers must provide itemized wage statements showing, among other things,

1 “gross wages earned,” “total hours worked by the employee,” and “net wages earned.” Labor
2 Code §§ 226(a)(1), (2), (5).

3 39. Defendants knowingly failed to comply with these provisions by, among other
4 things, failing to provide accurate itemized wage statements showing total number of hours
5 worked, and gross and net wages earned because these amounts were mathematically
6 miscalculated. Also, because Defendants failed to compensate Plaintiff and other aggrieved
7 employees properly for all hours worked, for sick pay, and for any non-compliant meal or rest
8 periods, the itemized wage statements provided by Defendants to Plaintiff and other aggrieved
9 employees were inaccurate.

10 40. Labor Code section 226.3 provides for civil penalties for violations of Section
11 226. Plaintiff seeks civil penalties of \$250 for the initial violation and \$1,000 for each subsequent
12 violation. Labor Code § 226.3.

13 **SEVENTH CAUSE OF ACTION**
14 **PAGA Civil Penalties for Failure to Timely Pay Wages Due**
15 **at Separation from Employment**
16 **(By Plaintiff and Aggrieved Employees against Each Defendant)**

17 41. Plaintiff incorporates the preceding paragraphs of this Complaint.

18 42. An employer who discharges an employee must pay all compensation due and to
19 that employee immediately upon discharge. Labor Code § 201. An employer must pay all
20 compensation due to an employee who quits within 72 hours. Labor Code § 202. An employer
21 that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee’s
22 wages for 30 days, or until back wages are paid in full. Labor Code § 203.

23 43. Defendants failed to pay Plaintiff and other aggrieved employees all final wages,
24 including minimum, regular, and overtime wages, and meal and rest period premium wages, as
25 required by Labor Code sections 201-202. Defendants failed to pay Plaintiff and other aggrieved
26 employees penalties due them based on Defendants’ failure to pay all final wages in a timely
27 manner as required by Labor Code section 203.

28 44. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not
reimbursed, and \$200 for each subsequent violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief on behalf of herself and other aggrieved employees against Defendants:

1. That this action be maintained as a Representative Action under the PAGA, and that Plaintiff and her counsel be provided with all enforcement capability as if this action were brought by the California Division of Labor Standards Enforcement;

2. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid minimum and overtime wages pursuant to Labor Code sections 1194, 1194.1, and 510, according to proof;

3. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid meal period premiums earned pursuant to Labor Code sections 226.7 and 512, according to proof;

4. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

5. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid or underpaid sick pay pursuant to Labor Code section 246, according to proof;

6. For recovery of all civil penalties permitted by Labor Code section 2699 and 226.3, for inaccurate itemized wage statements pursuant to Labor Code section 226, according to proof;

7. For recovery of all civil penalties permitted by Labor Code section 2699, for unpaid final wages and waiting time penalties pursuant to Labor Code sections 201-203, according to proof;

8. For Pre-Judgment and Post-Judgment interest;

9. Attorneys' fees and costs of suit, including expert fees and fees pursuant to all applicable state laws including Code of Civil Procedure section 1021.5; and

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10. Such other relief as this Court deems necessary, just, and proper.

COHELAN KHOURY & SINGER

Dated: September 16, 2021

By:

Michael D. Singer, Esq.
Jeff Geraci, Esq.

Jeff Geraci, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Maritza Mora, on behalf of herself and all other aggrieved employees

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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(† Also admitted in Illinois)

July 12, 2021

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified U.S. Mail with Return Receipt

San Antonio Regional Hospital
999 San Bernardino Road
Upland, CA 91786

Re: Notice by Maritza Mora, on behalf of herself and all similarly-aggrieved California employees of San Antonio Regional Hospital, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator:

Maritza Mora ("Claimant") intends to bring a Private Attorneys General Act ("PAGA") action against San Antonio Regional Hospital ("Employer") on behalf of all "aggrieved employees," meaning all non-exempt California employees subject to the policies and practices described below, including, but not limited to, Nursing Assistants.

Factual Statement

Maritza Mora worked for Employer as a Nursing Assistant from 1990 until she was terminated on August 1, 2021. Employer is an acute care hospital that employs more than 2,500 employees and serves over 200,000 patients each year.

Employer rounded Claimant's and other aggrieved employees' hours worked to the nearest tenth of an hour and paid them based on rounded, rather than actual time. Claimant and other aggrieved employees were required to clock in by their scheduled shift start time so they could receive reports on patients from the prior shift's attending employee. Often, Claimant would clock in a few minutes early to ensure she was not late. In addition, Claimant and other aggrieved employees would not clock out earlier than their scheduled shift end time, but sometimes clocked out a few minutes late to finish required work. Employer's rounding policy was not neutral and resulted over time in Employer failing to pay Claimant and other aggrieved employees for all time under its control.

Employer did not pay at least minimum wage for standby time. When on standby, Claimant and other aggrieved employees were required to answer their phones immediately. If they did not, they would be reprimanded or written up. If they were called into work, they were required to arrive at the hospital within 30 to 45 minutes. With no traffic, it took Claimant approximately 30 minutes to drive from her home to the hospital. With traffic, it took considerably longer. Claimant could not leave her home or be away from her home for the duration of her time on standby, nor could she make personal phone calls without risking missing a call from Employer, which would result in discipline.

Claimant and other aggrieved employees typically worked three 12-hour shifts per week. Records reflect that Employer paid Claimant and other aggrieved employees regular hourly wages for all hours worked up to 12 in one day and double-time wages for hours worked over 12 in one day. Employer did not pay Claimant and other aggrieved employees overtime wages as required by Labor Code section 510 for hours worked over eight in one day or forty in one week. On information and belief, Claimant and other aggrieved employees were not subject to a collective bargaining agreement pursuant to Labor Code section 514 that would allow Employer to avoid the overtime pay obligations of Labor Code section 510.

Employer had a policy and practice of failing to provide duty-free first meal periods of at least 30 minutes before the end of the fifth hour of work and second meal periods before the end of the tenth hour of work. Rather, Employer often provided Claimant and other aggrieved employees their first meal period late and did not provide a second meal period to these employees. First meal periods were often taken late because Claimant and other aggrieved employees had to monitor patients as patients ate lunch. For example, when an employee began work at 7 a.m., and patients ate from noon to 1 p.m., the employee could not take a lunch break until after 1 p.m., or the end of the sixth hour of work.

Employer has a policy and practice of failing to provide uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked. Claimant and other aggrieved employees were often unable to take more than one rest period per day despite typically working 12 hours, which requires three rest periods be authorized and permitted. For example, Claimant and other aggrieved employees were often called back to work when they were attempting to take rest periods, including being summoned over an intercom.

Employer failed to list total hours worked by employees in their wage statements. Rather, Employer listed total hours worked as 0.00 on all of Claimant's wage statements, and the total hours worked could not be easily discerned by adding the hours listed under different pay categories, as some were pay for hours worked and others were not. Additionally, because Employer mathematically miscalculated Claimant's and other aggrieved employees' wages, the gross and net wages earned were not accurately reflected in employees' wage statements.

Employer paid "PTO-sick" pay at Claimant's and other aggrieved employees' base hourly rates.

Summarizing the claims on behalf of Ms. Mora and all other aggrieved employees of Employer, Employer failed to:

1. Provide at least minimum wages for all time worked;
2. Provide overtime wages;
3. Provide meal periods;
4. Authorize and permit rest periods;
5. Provide compliant wage statements; and
6. Provide sick pay at the correct rate;
7. Timely pay all wages owed at separation from employment.

Labor Code § 1194 (Minimum Wages)

Labor Code section 1194 requires employers to pay at least minimum wage for all hours worked.

An employer may round employees' time worked only if the policy is fair and neutral on its face and on average does not underpay employees. *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.

Whether standby time is compensable depends upon several factors including "whether there are excessive geographic restrictions on the employee's movements; whether the frequency of calls is unduly restrictive; whether a fixed time limit for response is unduly restrictive; whether the on-call employee can easily trade his or her on-call responsibilities with another employee; and whether and to what extent the employee engages in personal activities during on-call periods." <https://www.dir.ca.gov/dlse/CallBackAndStandbyTime.pdf> (citing *Berry v. County of Sonoma* (1994) 30 F.3d 1174).

Employer's rounding policy was not neutral and resulted in underpayment of wages to Claimant and other aggrieved employees.

Claimant and other aggrieved employees were not paid minimum wages for standby time despite being geographically restricted, required to answer phone calls immediately, and being unable to engage in personal activities that would delay them from answering their phone or arriving at the facility when called in.

Labor Code §§ 510 and 514 (Overtime Wages)

Labor Code section 510 requires employers to pay overtime wages for hours worked over eight per day or forty per week, and double time wages for hours over twelve per day.

Labor Code section 514 provides that "[s]ections 510...do not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage."

Claimant and other aggrieved employees were not paid overtime wages pursuant to Labor Code section 510 for hours worked over eight in one day or forty and one week and no valid collective bargaining agreement exempted Employer from this requirement.

Labor Code §§ 512 and 226.7 (Meal and Rest Periods and Premium Wages)

Employers must provide employees a 30-minute, uninterrupted meal period before the end of the fifth hour of work and a second such meal period before the end of the tenth hour of work. Labor Code § 512. If meal breaks are late, missed, short, or interrupted the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7.

Likewise, employers must authorize and permit a 10-minute, uninterrupted rest period for every 4 hours, or major fraction thereof, that an employee works; if the rest period is short, interrupted, or not authorized or permitted, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7.

Because of Employer's policies and practices, Claimant and other aggrieved employees did not receive compliant meal and rest periods. Premium wages were not paid for all missed or non-compliant breaks.

Labor Code § 226 (Wage Statements)

Employers must provide itemized wage statements showing, among other things, "gross wages earned," "total hours worked by the employee," and "net wages earned." Labor Code §§ 226(a)(1), (2), (5).

Employer failed to list total hours worked by employees in their wage statements and this figure was not easily discernable by looking at the wage statements. Employer also failed to list the correct gross and net wages earned by Claimant and other aggrieved employees because these amounts were mathematically miscalculated.

Labor Code § 246 (Sick Pay)

Sick pay must be compensated at the employee's regular rate of pay, either for the workweek in which the paid leave was taken, or as determined by averaging over a 90-day period. Labor Code § 246(l). Under either method, the regular rate is calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked. Labor Code § 246(l).

Employer failed to incorporate shift differential pay into Claimant's and other aggrieved employees' regular rates of pay to calculate their sick pay, instead paying sick pay at their base hourly rates.

CA Labor & Workforce Development Agency
San Antonio Regional Hospital
Re: Maritza Mora
July 12, 2021
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Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Labor Code §§ 201-202. If an employer willfully fails to timely pay all final wages, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

Because Employer failed to pay all earned wages, Employer failed to pay all final wages due to Claimant and other aggrieved employees and violated Sections 201-203.

Conclusion

Claimant requests the Labor and Workforce Development Agency (“LWDA”) initiate enforcement for the violations described above against Employer. If the LWDA does not pursue enforcement, Ms. Mora will pursue claims for statutory penalties and seek all remedies available for Employer’s violations of the Labor Code and applicable Industrial Welfare Commission Wage Order, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER


Jeff Geraci, Esq.

cc (via email only):
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