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9 Attorneys For Plaintiff HEATHER BARTON, an individual in her representative capacity
10 on behalf of all similarly situated aggrieved employees

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF HUMBOLDT**

13 HEATHER BARTON, an individual in her
14 representative capacity, and on behalf of all others
15 similarly situated,

16 Plaintiff,

17 v.

18 ST. JOSEPH HEALTH SYSTEM, a California
19 nonprofit corporation; ST. JOSEPH HEALTH
20 NORTHERN CALIFORNIA, LLC doing
21 business as ST. JOSEPH HOSPITAL –
22 EUREKA; and DOES 1 through 25, inclusive,

23 Defendants.

Case No.: CV2200423

24 **FIRST AMENDED COMPLAINT FOR**
25 **DAMAGES FOR VIOLATION OF LABOR**
26 **CODE 2698-2699 et. seq. (Private Attorneys**
27 **General Act of 2004)**

28 [Action Filed March 24, 2022]

1 Plaintiff, HEATHER BARTON, in her representative capacity on behalf of the State of
2 California, acting as private attorney general under the Labor Code Private Attorneys General Act
3 of 2004 §2699, et sea. (the “PAGA”) only, brings this First Amended Complaint and hereby states
4 and alleges as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this First Amended PAGA action against Defendants, ST. JOSEPH
7 HEALTH SYSTEM, a California nonprofit corporation; ST. JOSEPH HEALTH NORTHERN
8 CALIFORNIA, LLC dba ST. JOSEPH HOSPITAL – EUREKA, a California limited liability
9 company, (hereinafter “Defendants”), and any subsidiaries or affiliated companies on behalf of all
10 current and former similarly situated aggrieved employees who work or worked for Defendants. To
11 the extent that statutory violations are mentioned for certain Labor Code violations, Plaintiff does
12 not seek underlying general and/or special damages for such violations. Plaintiff does not seek to
13 recover anything other than civil penalties as permitted by the PAGA and California Labor Code
14 §2699.

15 2. California has enacted the PAGA to permit individuals to bring an action on behalf of
16 themselves and on behalf of others similarly situated “(Aggrieved Employees”) for PAGA penalties
17 only, which is the precise and sole nature of this action.

18 3. Accordingly, Plaintiff seeks to obtain all applicable relief for Defendants’ violations
19 under the PAGA and solely for relief as permitted by PAGA – that is penalties and any other relief
20 the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as
21 attempting to obtain any relief that would not be available in a PAGA only action.

22 **JURISDICTION AND VENUE**

23 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure sections
24 395 and 410.10. Plaintiff worked for Defendants in the state of California, in the County of Humboldt.
25 Defendants conducts business in the State of California including in Humboldt County, California and
26 the unlawful acts alleged herein occurred within this County against Plaintiff and similarly situated
27 Aggrieved Employees and have a direct impact within the State of California and within the County
28 of Humboldt.

THE PARTIES

5. Plaintiff, HEATHER BARTON, is a current resident of Fletcher, Ohio and at all relevant times worked for Defendants in Eureka, California in the County of Humboldt. During the relevant statutory period, she was employed by Defendants as a non-exempt Traveling CVOR Surgical Technician from on or about September 13, 2020, to on or about February 7, 2021.

6. At all times relevant to this Complaint, Defendant, ST. JOSEPH HEALTH SYSTEM is and was a California domestic nonprofit corporation, duly registered with the California Secretary of State and conducting regular business throughout California, including within the county of Humboldt, providing medical services and where it employed Plaintiff and other similarly situated Aggrieved Employees.

7. At all times relevant to this Complaint, ST. JOSEPH HEALTH NORTHERN CALIFORNIA, LLC, doing business as ST. JOSEPH HOSPITAL – EUREKA, is and was a California limited liability company, conducting regular business throughout California, including within the County of Humboldt, providing medical services and where it employed Plaintiff and other similarly situated Aggrieved Employees.

8. Plaintiff is currently unaware of the true names or capacities of all the Defendants sued herein under the fictitious names DOES 1–25, inclusive, but prays for leave to amend and serve such fictitiously-named Defendants pursuant to California Code of Civil Procedure section 474 once their names and capacities become known.

9. Plaintiff is informed and believes, and thereon alleges, that DOES 1–25, inclusive, are the partners, agents, owners, shareholders, managers, principals or employees of Defendants and/or and were acting on behalf of Defendants.

10. Accordingly, Plaintiff is informed and believes and thereon alleges, that each and all of the acts and omissions alleged herein was attributable to or performed by Defendants, each acting as the agent for the other, with legal authority to act on the other’s behalf. The actions of any and all Defendants were in accordance with and represent the policies of each of the other Defendants.

11. 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, Defendants, and each of them,

1 aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing
2 the damages herein alleged.

3 12. Plaintiff is informed and believes and thereon alleges that each of the Defendants is
4 in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
5 occurrences and transactions alleged herein.

6 **FACTUAL BACKGROUND**

7 13. Upon information and belief, Defendants employ and has employed Plaintiff and
8 similarly situated individuals who currently work or formerly worked as hourly compensated, non-
9 exempt nurses, medical assistants, CNA's, RN's, surgical technicians, doctors, patient attendants, or
10 other similarly situated positions (the "Aggrieved Employees") for Defendants at their locations
11 throughout the State of California.

12 14. Plaintiff and the Aggrieved Employees were not or have not been properly
13 compensated for all hours worked and all wages earned during the relevant liability period pursuant
14 to the California Labor Code and applicable Industrial Welfare Commission Wage Order No. 5 ("IWC
15 No. 5").

16 15. During the statutory period, Plaintiff alleges that due to chronic understaffing, she
17 and the Aggrieved Employees were actively impeded and prohibited by Defendants from taking their
18 proper rest breaks after every fourth hour of labor performed, or major fraction thereof; and were also
19 deprived of thirty-minute (30) meal break periods after each fifth hour of labor performed. Because
20 they were routinely understaffed, Defendants demanded that Plaintiff and the Aggrieved Employees
21 continue working during work during such times they should have been afforded their lawful rest and
22 meal breaks. Often Defendants instructed them to cut their breaks short or sometimes told them to
23 give their breaks to other hospital staff. Thus, rest and meal breaks if provided at all, were often cut
24 short, and were never duty free and uninterrupted. It would be a very rare occasion when Plaintiff and
25 the Aggrieved Employees would be provided with the ability to take an actual full 30-minute meal
26 break after each, fifth hour of labor performed.

1 16. Accordingly, during the relevant statutory period, the Plaintiff and Aggrieved
2 Employees were not provided with one hour's wages in lieu of missed meal breaks in one or more of
3 the following manners:

- 4 a) They were not provided timely, uninterrupted, full thirty-minute meal periods after
5 every five hours of labor performed and were not compensated one hour's wages
6 in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and
7 applicable IWC Wage Order No. 5-2001; and/or
8 b) They were required to work through their daily meal period(s), or to work an
9 unlawful "on-duty meal period;" and/or
10 c) They were impeded in their ability to take a meal period.

11 17. In addition, during the relevant statutory period, Plaintiff and the Aggrieved
12 Employees were not provided lawful rest periods, and were not provided with one hour's wages in
13 lieu thereof, in one or more of the following manners:

- 14 a) They were required to work without being provided a minimum ten-minute,
15 uninterrupted, duty free rest period for every four hours or major fraction thereof
16 worked and were not being compensated one hour of pay at their regular rate of
17 compensation for each workday that a rest period was not provided; and/or
18 b) They were either impeded or prevented from taking or unable to take lawful rest
19 break periods.

20 18. At no time did Plaintiff ever validly waive her meal breaks.

21 19. Upon information and belief, and based thereon, Plaintiff also alleges that during the
22 relevant statutory period, the Aggrieved Employees did not and have not validly waived their meal
23 breaks.

24 20. At all times relevant Defendants did not pay Plaintiff any premium pay equal to one
25 of pay at her regular rate of pay for each workday that Defendants failed to provide Plaintiff with a
26 rest break or a meal break.

27 21. Plaintiff alleges on information and belief that at all times relevant that Defendants
28 did not pay each of the nonexempt Aggrieved Employees premium pay equal to one hour of pay for

1 each workday Defendants failed to provide the nonexempt Aggrieved Employees a rest break or
2 compliant meal break period.

3 22. The time during these short and non-duty free rest and meal breaks when Plaintiff
4 and the Aggrieved Employees were working while “off the clock” was also not recorded nor
5 compensated by Defendants as part of the actual hours worked by Plaintiff and the Aggrieved
6 Employees. Thus, Defendants have failed to maintain accurate records of hours worked and wages
7 earned in violation of California Labor Code Section 1174(d).

8 23. Due to Defendants’ systemic and operational policies and practices, Plaintiff and
9 Aggrieved Employees’ often worked ten to fifteen (10-15) minutes prior to clocking in each day.
10 These non-recorded hours worked while off the clock before work and during purported meal breaks,
11 caused their shifts to exceed more than eight hours in a single day and more than forty hours in a
12 workweek and constituted overtime hours for which they were not compensated in violation of
13 California Labor Code Section 510.

14 24. Because of the foregoing alleged policies and derelict timekeeping practices by the
15 Defendants, the failed to provide Plaintiff with accurately itemized wage statements during the
16 relevant statutory period that set forth all hours of labor actually performed and at the correct and
17 accurate corresponding rates of pay during each pay period.

18 25. Plaintiff alleges on information and belief that at all times relevant, Defendants failed
19 to provide the Aggrieved Employees with accurately itemized wage statements that set forth all hours
20 of labor actually performed and at the correct and accurate corresponding rates of pay during each pay
21 period.

22 26. Thus at all times relevant Defendants failed to timely pay Plaintiff all wages earned
23 at least twice monthly.

24 27. Plaintiff alleges on information and belief that Defendants failed to timely pay the
25 Aggrieved Employees all wages earned at least twice monthly.

26 28. During the relevant statutory period, Plaintiff and non-exempt Aggrieved Employees
27 were not paid wages for all hours worked, and/or were required to work without compensation during
28 the workday and workweek while performing compensable tasks and duties while off the clock.

1 29. Due to Defendants' willful failure to properly pay for all hours actually worked,
2 included overtime wages earned, Defendants consequently failed to pay Plaintiff all final wages she
3 was owed on the date she separated from her employment with Defendants in violation of California
4 Labor Code §§ 201-202.

5 30. Plaintiff alleges on information and believe that Defendants failed to pay each
6 Aggrieved Employee all final wages they were owed upon the date of their termination or discharge
7 from their employment relationship with Defendants in violation of California Labor Code §§ 201-
8 202.

9 31. Plaintiff alleges on information and believe that Defendants failed to pay each
10 Aggrieved Employee who resigned from their employment relationship with Defendants, all final
11 wages they were owed within 72 hours of their resignation.

12 32. Further, during the relevant statutory period as a matter of routine and daily practice,
13 Plaintiff and both exempt and non-exempt Aggrieved Employees are/were required to use their
14 personal cell phones in conducting their job duties. Utilization of their personal cell phones was or is
15 an essential part of the job. Plaintiff and the Aggrieved Employees are/were required by Defendants
16 to use their personal cell phones to maintain communications with other hospital staff in the course of
17 performing daily work-related duties with no reimbursement for the expenses incurred from
18 Defendants. Plaintiff and the Aggrieved Employees are/were required to always have their personal
19 cellphones on standby, in the event that Defendants needed to reach them regarding work assignments,
20 scheduling, and various work-related issues.

21 33. At no time have Defendants ever reimbursed Plaintiff or the Aggrieved Employees
22 for the expenses they incurred for the use of their personal cell phones for these work related
23 communications and job duties in violation of California Labor Code Section 2802.

24 34. Defendants engaged in, ratified and enforced the following unlawful practices and
25 policies against Plaintiff and the Aggrieved Employees she seeks to represent:

- 26 a) Failing to pay former employee Aggrieved Employees who were discharged, laid
27 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
28 and 203.

- b) Failing to pay non-exempt employees overtime for all hours worked in excess of an eight-hour day or in excess of a forty-hour workweek in violation of Labor Code Section 510, 1194 and IWC Wage Order No. 5-2001.
- c) Failing to maintain accurate records of all hours worked and earned wages in violation of Labor Code §§ 226 and 1174(d) and IWC Wage Order No. 5-2001.
- d) Failing to provide non-exempt employees, timely, duty free, uninterrupted full 30-minute meal periods that comply or complied with Labor Code Section 226.7 and IWC Wage Order No. 5-2001 after every five hours of labor performed;
- e) Failing to provide timely, duty free, uninterrupted full ten-minutes rest periods after every fourth hour of labor performed or major fraction thereof, in violation of Labor Code Section 226.7 and IWC Wage Order No. 5-2001, Section 12 (A&B).
- f) Failing to pay premium pay penalties for each missed rest and meal break violation in violation of Labor Code § 226.7 (b) and IWC Wage Order No. 5-2001;
- g) Failing to furnish accurately itemized wage statements in violation of Labor Code Section 226(a);
- h) Failing to pay employees all wages due, each and every pay period under Labor Code Section 204.
- i) Failing to reimburse employees for personal cell phone expenses necessarily incurred in the discharge of their duties in violation of Labor Code Section 2802;

35. On information and belief, Plaintiff alleges that Defendants' actions as described throughout this Complaint were willful and occurred during the PAGA period. To the extent equitable tolling operate to toll claims by Aggrieved Employees against Defendants, the PAGA Period should be adjusted accordingly. To the extent that any of the alleged conduct and violations did not affect Plaintiff personally, during the PAGA period, Plaintiff in her representative capacity seeks penalties for those violations that affected other Aggrieved Employees pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for publication 12/19/18).

36. Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by the Private Attorneys General Act ("PAGA")

1 to the extent permitted by law, and as aggrieved employee who was formerly employed by Defendants
2 who was subject to Defendants' violations of the Labor Code as alleged herein. A true and correct
3 copy of Plaintiff's August 12, 2021 written notice showing compliance with Labor Code § 2699.3 is
4 attached hereto as **Exhibit A** and as amended on April 26, 2022 as **Exhibit B hereto**, demonstrates
5 that the Plaintiff is an aggrieved employee who has exhausted her administrative remedies and has
6 standing to bring a representative action on behalf of the State of California and Labor and Workforce
7 Development Agency (the "LWDA") as a private attorney general.

8 37. No notice of cure by Defendants were provided and no notice of investigation was
9 received from the LWDA in the statutorily proscribed 65-day period since the August 12, 2021 written
10 notice. Accordingly, Plaintiff files this as a first amended representative action as specifically
11 permitted and authorized by Labor Code § 2699.3(a)(2)(A).

12 **FIRST CAUSE OF ACTION**

13 **For Violation of the Private Attorneys General Act of 2004**

14 **California Labor Code §2698, et seq.**

15 **(As to Defendants and Does 1-25, Inclusive)**

16 38. Plaintiff re-alleges and incorporates by reference all of the foregoing paragraphs, as
17 though fully set forth herein.

18 39. The PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
20 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
21 a law enforcement action designed to protect the public and not to benefit private parties. The purpose
22 of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens
23 as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
24 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
25 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly,
26 PAGA claims cannot be subject to arbitration.
27
28

1 40. PLAINTIFF, and such persons that may be added from time to time who satisfy the
2 requirements and exhaust the administrative procedures under the Private Attorney General Act,
3 brings this Representative Action on behalf of the State of California and behalf of all current and
4 former aggrieved individuals who were employed by Defendants at any time from March 23, 2021 to
5 March 23, 2022 (the "PAGA Period"). Plaintiff, by her employment with Defendants and
6 Defendants' violations of the Labor Code as alleged herein, is an aggrieved employee with standing
7 to bring an action under the PAGA.

8 41. Plaintiff, by virtue of **Exhibit A (written PAGA notice filed on August 12, 2021)**
9 **and Exhibit B (Plaintiff's First Amended PAGA notice filed on April 26, 2022)** attached hereto,
10 has satisfied all prerequisites to serve as a representative of the general public to enforce California's
11 labor laws including, without limitation, the penalty provisions identified in Labor Code § 2699.5.
12 Since the LWDA has taken no steps within the time period required to intervene with its own
13 investigation of the claims stated herein, and because Defendants took no corrective action to remedy
14 the allegations set forth above, Plaintiff, as a representative of the people of the State of California,
15 will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or
16 the DLSE. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

17
18 "The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of
19 the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3,
20 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206,
21 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5,
22 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1,
23 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision
24 (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section
25 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602,
26 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021,
27 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section
28 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, 1309.5, 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.”

42. Plaintiff is informed and believes that Defendants have violated and continues to violate the provisions of the Labor Code and applicable Wage Order No. 5-2001.

43. 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.

44. Plaintiff, on her own behalf, and on behalf of the other similarly situated Aggrieved Employees is an “aggrieved employees” because she was employed by the violators (the named Defendants herein and its related Doe affiliates and subsidiaries), during the one-year statutory time period and during such time period, was subjected to one or more violations, including Labor Code sections 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194(a), 2802 and IWC No. 5, and are therefore properly suited to represent the interests of a PAGA person.

45. Plaintiff is informed and believes that Defendants have violated and continues to violate provisions of the Labor Code and applicable Wage Order No. 5. Despite mailing of the original written PAGA notice on August 12, 2021 (**Exhibit A**) at least 65-days prior to the filing of the filing of this Complaint, the LWDA has not notified Plaintiff that it intends to investigate the alleged Labor Code violations identified in **Exhibit A**, such that, by operation of law Plaintiff is entitled to bring this first amended complaint as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

Failure to Pay Wages

46. Labor Code §200(a) defines “wages” as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.”

47. Plaintiff and the Aggrieved Employees were at all times subject to California’s laws and regulations protecting employees’ entitlement to be paid and presumption to be paid all wages earned for labor performed, including an hourly wage for each and every hour worked.

1 48. Labor Code § 1194 provides that employees are entitled to wages and compensation
2 for work performed, at the legal rate, including straight time, overtime, and double time.

3 49. Furthermore, under Labor Code § 1194, employees must be separately paid an hourly
4 wage for each and every hour worked.

5 50. At all relevant times herein, Defendants were required to compensate Plaintiff and
6 the non-exempt Aggrieved Employees wages for all hours worked pursuant to Labor Code § 1194.

7 51. By uniformly and systemically failing to track and record all of the hours worked by
8 Plaintiff and the nonexempt Aggrieved Employees, including time for work performed while off the
9 clock during the non-duty-free rest and meal break periods, Defendants were able to skim wages from
10 the Plaintiff and the Aggrieved Employees by not paying them a separate hourly wage for each and
11 every hour worked.

12 52. Through their unlawful and illegal policies and practices, Defendants failed to pay
13 Plaintiff and the nonexempt Aggrieved Employees all wages owed to them at the proper corresponding
14 legal rates during the relevant time period.

15 **Failure to Pay Overtime Wages**

16 53. At all times relevant herein, Defendants were required to compensate their non-
17 exempt employees minimum wages for all hours worked and overtime wages for all hours worked in
18 excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandates of Labor
19 Code §§ 510, 1194, and 1198.

20 54. As a systemic operational whole, pattern and practice, Defendants routinely failed to
21 pay Plaintiff and the nonexempt Aggrieved Employees for hours worked off the clock, including the
22 time for labor performed during “on duty” rest and meal break periods. Such off-the-clock work
23 performed caused Plaintiff and the Aggrieved Employees to work overtime hours for which they were
24 not paid by Defendants.

25 55. Thus during the relevant PAGA Period, Defendants failed to compensate Plaintiff
26 and the Aggrieved Employees for all hours worked, resulting in a failure to pay all overtime wages
27 they were due each and every pay period.

1 **Failure to Provide and Keep Accurate Records**

2 56. Labor Code section 1174 provides in relevant part that every person employing labor in this
3 state shall “[k]eep, at a central location in the state or establishments at which employees are
4 employed, payroll records showing the hours worked daily by and the wages paid to, and the number
5 of piece-rate units earned by and any applicable piece rate paid to, employees employed at the
6 respective plants or establishments.”

7 57. At all times relevant, Defendants willfully failed to keep accurate payroll records showing the
8 hours worked and wages earned daily by Plaintiff and the Aggrieved Employees.

9 58. At all times relevant herein, Defendants were required to keep accurate records showing the
10 names and addresses of all employees employed and accurately reflecting all the hours worked daily
11 and wages earned and paid, pursuant to the mandates of Labor Code §1174(d).

12 59. As a result of and in addition to Defendants’ various Labor Code violations, including
13 Defendants’ failure to accurately record all hours worked, including hours for time performed prior to
14 logging in for work and for time worked during rest and meal break periods, Defendants failed in their
15 affirmative obligation to maintain accurate records regarding Plaintiff and the Aggrieved Employees
16 including accurate records of all hours actually worked and wages paid at their applicable respective
17 corresponding rates of pay in violation of Labor Code §1174(d).

18 **Failure to Provide Meal Periods and Rest Periods**

19 60. In accordance with the mandates of Labor Code §226.7 and 512, Defendants were
20 required to authorize and relinquish control to permit their non-exempt employees to take a ten-minute,
21 uninterrupted, duty free rest break for every four (4) hours worked or a major fraction thereof, and
22 were further required to provide their non-exempt employees with a full, uninterrupted 30-minute
23 meal period for every five (5) hours of labor performed.

24 61. As alleged, as a pattern and practice, Defendants failed to provide Plaintiff and the
25 Aggrieved Employees with legally mandated rest break and meal break periods and failed to pay
26 proper premium pay compensation for such failures in violation of Labor Code §§ 226.7, 512 and
27 IWC No. 5.

1 **Failure to Provide Complete and Accurate Wage Statements**

2 62. Pursuant to Labor Code §§ 226 (a) provides that “every employer shall, semimonthly
3 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
4 part of the check, draft, or voucher paying the employees’ wages or separately when wages are paid
5 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
6 (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period
7 for which the employee is paid..., and (9) all applicable hourly rates in effect during the pay period
8 and the corresponding number of hours worked at each hourly rate by the employee...”

9 63. As a result of the alleged and various Labor Code violations, Defendants failed to
10 maintain accurate records of all hours actually worked/wages earned and thus consequently failed in
11 their affirmative obligation to provide Plaintiff and the Aggrieved employees with accurately itemized
12 wage statements reflecting the true total number of hours each of them actually worked during each
13 and every pay period, their gross wages earned, all deductions, and net wages earned, along with their
14 applicable corresponding hourly rates, including premium pay for missed rest and/or meal breaks and
15 including overtime rates for each respective hourly rate of overtime worked. The inaccurate wage
16 statements were not caused by inadvertent and occasional clerical mistakes, but rather were the result
17 of a pre-determined, deliberate and uniform deliberate operational policies and businesses practices of
18 Defendants and shoddy and inaccurate timekeeping practices.

19 **Failure to Timely Pay Wages**

20 64. Pursuant to Labor Code §204, all wages earned by Plaintiff and the Aggrieved
21 Employees were and/or are “due and payable twice during each calendar month, on days designated
22 in advance by the employer as regular paydays.” For [l]abor performed between the 1st and 15th days,
23 inclusive of any calendar month” payment is due no later than the 26th day of the month. “... for labor
24 performed between the 16th and the last day, inclusive, of any calendar month, payment is due no later
25 than the 10th day of the following month...” By failing to pay Plaintiff and the Aggrieved Employees
26 properly for all hours worked at the proper corresponding rates of pay, including overtime hour and
27 overtime rates of pay, Defendants deprived them of timely payment of all wages earned, when due
28

1 and owing at these regularly scheduled intervals throughout the relevant time period in violation of
2 Labor Code §204.

3 **Failure to Pay Wages Due Upon Termination or Separation of Employment**

4 65. Labor Code §§ 201 and 202 require employers such as Defendants to pay their
5 employees all wages due within the strict time frames set forth therein. California Labor Code § 203
6 provides that if any employer willfully fails to timely pay such wages, the employer must continue to
7 pay the employee's subject wages until the back wages are paid in full or an action is commenced, up
8 to a maximum of 30 calendar days of wages.

9 66. At all times relevant, Labor Code section 201 provided that if an employer discharges an
10 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

11 67. At all times relevant, Labor Code section 202 provided that if an employee not having a
12 written contract for a definite period quits his or her employment, his or her wages shall become due
13 and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice
14 of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

15 68. As alleged supra, Plaintiff and certain of the Aggrieved Employees ceased
16 employment with Defendants during the statutory PAGA period. At the time of separation, each of
17 these individuals was entitled to be paid all wages each was due for all the hours each of them
18 respectively worked, but to date, the Plaintiff, nor the formerly employed Aggrieved Employees have
19 received such compensation.

20 69. Defendants violated Labor Code §§ 201-203 by failing to timely pay all accrued
21 wages due to Plaintiff and the Aggrieved employees who were discharged or who resigned during the
22 relevant PAGA Period.

23 **Failure to Reimburse Expenses**

24 70. California Labor Code § 2802 provides that an employer shall indemnify his or her
25 employees for all necessary expenditures or losses incurred by the employee in direct consequence of
26 the discharge of his or her duties.

27 71. As alleged supra, Defendants requires/required that Plaintiff and all exempt and
28 nonexempt Aggrieved Employees utilize their personal cell phones in the daily and routine discharge

1 of their duties to maintain communications with other hospital staff in the course of work-related
2 duties. In addition these Aggrieved Employees were required to always have their personal cellphones
3 on standby, in case Defendants needed to reach them and communicated with them regarding work
4 assignments, scheduling, and other various work-related issues. Defendants does not and has not ever
5 reimbursed Plaintiff and the Aggrieved Employees for expenses they incurred in the routine and daily
6 use of their personal cell phone for work related duties and communications.

7 72. An employer that knows or has reason to know that an employee has incurred work-related
8 expenses must reimburse the employee, even if the employee does not request reimbursement.
9 However, Defendants have not paid Plaintiff and the Aggrieved Employees any reimbursement for
10 the daily imposition and required use of their personal cellphones in the performance of their job
11 duties, in violation of Labor Code Section 2802.

12 73. As a direct result of Defendants' failure to reimburse Plaintiff and the Aggrieved
13 Employees for their personal cell phone expenses they necessarily incurred in the discharge of their
14 work-related duties, Defendants have violated Labor Code Section 2802.

15 **Damages**

16 74. Defendants' actions constitute continuing and ongoing unlawful activities prohibited
17 by the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

18 75. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to recover
19 from Defendants civil penalties in the amount of a hundred dollars (\$100) for each aggrieved employee
20 per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee
21 per pay period for each subsequent violation; and Attorneys' fees and costs pursuant to Labor Code §
22 2699(g) and any other applicable statute.

23 76. As alleged supra, written notice of these violations was provided to employer and to
24 the LWDA pursuant to Labor Code §2699.3. More than 65 days have passed since notice was
25 provided and Plaintiff has not received any notification from the LWDA that it intends to investigate
26 the alleged violations. Therefore, the representative Plaintiff is entitled to proceed with civil
27 prosecution of the PAGA claims under Labor Code §2699, et seq.
28

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

78. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in her favor including an award of civil penalties under California Labor Code §2699 in the amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation during the relevant period, according to proof.

79. Plaintiff as the personal representative of the Aggrieved Employees, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the liability period, in an amount according to proof, as to those penalties that are otherwise only available to public agencies. Said funds 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 representative Plaintiff pursuant to PAGA prays for judgment as follows:

1. Upon the PAGA Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code §2698 et seq., for Defendants' violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1198, 2802 and applicable Wage Order No. 5.
2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699 and any other applicable statute; and
3. For such other and further relief the Court may deem just and proper.

DATED: April 26, 2022

SW EMPLOYMENT LAW GROUP, APC

BY:

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Attorneys for Plaintiff and

Similarly Situated Aggrieved Employees