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Assigned for All Purposes
Judge William Claster

CX-104

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

THANH PHAN, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

ST. JUDE MEDICAL CENTER, a California
Corporation; ST. JUDE HOSPITAL, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 30-2022-01256697-CU-OE-CXC

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

1 Plaintiff Thanh Phan (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for her own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants St. Jude Medical Center and
8 St. Jude Hospital (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties
9 for herself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

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

23 **THE PARTIES**

24 4. Defendant St. Jude Medical Center is a California corporation that at all relevant
25 times mentioned herein conducted and continues to conduct substantial business in the state of
26 California.
27

28 5. Defendant St. Jude Hospital is a California corporation that at all relevant times

1 mentioned herein conducted and continues to conduct substantial business in the state of
2 California.

3 6. St. Jude Medical Center and St. Jude Hospital are the joint employers of
4 PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performs work for
5 respectively, and are therefore jointly responsible as employers for the conduct alleged herein,
6 and are therefore collectively referred to herein as "DEFENDANT."

7 7. DEFENDANT is a hospital that was established in 1957 and is located in Orange
8 County, California.

9 8. PLAINTIFF has been employed by DEFENDANT in California since 2010 and
10 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
11 basis, and entitled to the legally required meal and rest periods and payment of minimum and
12 overtime wages due for all time worked.

13 9. PLAINTIFF, and such persons that may be added from time to time who satisfy
14 the requirements and exhaust the administrative procedures under the Private Attorney General
15 Act, brings this Representative Action on behalf of the State of California with respect to herself
16 and all individuals who are or previously were employed by St. Jude Medical Center and/or St.
17 Jude Hospital in California and classified as non-exempt employees ("AGGRIEVED
18 EMPLOYEES") during the time period of December 10, 2020 until a date as determined by the
19 Court (the "PAGA PERIOD").

20 10. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
21 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
22 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
23 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
24 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
25 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
26 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
27 the meaning of Labor Code § 2699, *et seq.*

28 11. The true names and capacities, whether individual, corporate, subsidiary,

1 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
2 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
3 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
4 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
5 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
6 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
7 responsible in some manner for one or more of the events and happenings that proximately
8 caused the injuries and damages hereinafter alleged.

9 12. The agents, servants and/or employees of the Defendants and each of them acting
10 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
11 agent, servant and/or employee of the Defendants, and personally participated in the conduct
12 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
13 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
14 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
16 agents, servants and/or employees.

17 **THE CONDUCT**

18 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
19 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
20 meaning the time during which an employee is subject to the control of an employer, including
21 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
22 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are
23 under DEFENDANT's control. PLAINTIFF and the AGGRIEVED EMPLOYEES also worked
24 off the clock with respect to time spent undergoing mandatory drug testing or any other testing
25 and/or examination required as a condition of employment. Additionally, DEFENDANT, as
26 a matter of established company policy and procedure, administers a uniform practice of
27 rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED
28 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their

1 employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would
2 have been paid had they been paid for actual recorded time rather than “rounded” time.
3 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and the
4 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
5 condition of employment, required these employees to submit to mandatory temperature checks
6 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT’s
7 timekeeping system for the workday. Finally, DEFENDANT also requires PLAINTIFF and the
8 AGGRIEVED EMPLOYEES to complete mandatory unpaid training related to computer
9 systems being used at the hospital and also complete mandatory “Health Streams” which deal
10 with hospital compliance issues. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES
11 forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working
12 without their time being correctly recorded and without compensation at the applicable rates.
13 DEFENDANT’s policy and practice not to pay PLAINTIFF and the AGGRIEVED
14 EMPLOYEES for all time worked, is evidenced by DEFENDANT’s business records.

15 14. State law provides that employees must be paid overtime and meal and rest break
16 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the
17 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
18 to specific elements of an employee’s performance.

19 15. The second component of PLAINTIFF’s and the AGGRIEVED EMPLOYEES’
20 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
21 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
22 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
23 hourly basis with incentive compensation when the employees met the various performance
24 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
25 overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
26 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
27 employees’ “regular rate of pay” for purposes of calculating overtime pay and meal and rest
28 break premium pay. Management and supervisors described the incentive program to potential

1 and new employees as part of the compensation package. As a matter of law, the incentive
2 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included
3 in the “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime
4 compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
5 EMPLOYEES by DEFENDANT.

6 16. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
7 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
8 are not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
9 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
10 more than five (5) hours during some shifts without receiving a meal break. Further,
11 DEFENDANT from time to time fails to provide PLAINTIFF and the AGGRIEVED
12 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
13 are required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engages in
14 the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and the
15 AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
16 forfeit meal breaks without additional compensation and in accordance with DEFENDANT’s
17 corporate policy and practice.

18 17. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
19 are also required from time to time to work in excess of four (4) hours without being provided
20 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
21 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
22 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
24 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
25 PLAINTIFF and the AGGRIEVED EMPLOYEES are also not provided with one hour wages
26 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
27 provide employees with off-duty rest periods, which the California Supreme Court defined as
28 time during which an employee is relieved from all work related duties and free from employer

1 control. In so doing, the Court held that the requirement under California law that employers
2 authorize and permit all employees to take rest period means that employers must relieve
3 employees of all duties and relinquish control over how employees spend their time which
4 includes control over the locations where employees may take their rest period. Employers
5 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
6 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and the AGGRIEVED
7 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
8 states PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
9 their rest period.

10 18. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
11 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
12 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
13 is required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked,
14 meaning the time during which an employee was subject to the control of an employer,
15 including all the time the employee was permitted or suffered to permit this work.
16 DEFENDANT requires these employees to work off the clock without paying them for all the
17 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
18 known that PLAINTIFF and the AGGRIEVED EMPLOYEES are under compensated for all
19 time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit time
20 worked by working without their time being accurately recorded and without compensation at
21 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
22 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
23 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
24 1197.1.

25 19. From time to time, DEFENDANT also fails to provide PLAINTIFF and the
26 AGGRIEVE EMPLOYEES with complete and accurate wage statements which failed to show,
27 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
28 every employer shall furnish each of his or her employees with an accurate itemized wage

1 statement in writing showing, among other things, gross wages earned and all applicable hourly
2 rates in effect during the pay period and the corresponding amount of time worked at each
3 hourly rate. Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by failing to list the
4 correct name of the legal entity that employs PLAINTIFF and the AGGRIEVED
5 EMPLOYEES. Aside, from the violations listed above in this paragraph, DEFENDANT fails
6 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
7 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provides
8 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which violated Cal.
9 Lab. Code § 226.

10 20. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
11 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
12 wages are paid not more than seven calendar days following the close of the payroll period.
13 Cal. Lab. Code § 210 provides:

14 [I]n addition to, and entirely independent and apart from, any other penalty provided in
15 this article, every person who fails to pay the wages of each employee as provided in
16 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
17 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
18 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
19 for each failure to pay each employee, plus 25 percent of the amount unlawfully
20 withheld.

21 21. DEFENDANT from time to time fails to pay PLAINTIFF and the AGGRIEVED
22 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
23 Lab. Code § 204(d).

24 22. DEFENDANT underpays sick pay wages to PLAINTIFF and the AGGRIEVED
25 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
26 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
27 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
28 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of pay.

23. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
employees be calculated by dividing the employee's total wages, not including overtime

1 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
2 of employment.

3 24. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
4 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
5 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
6 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
7 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
8 Code Section 246.

9 25. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
10 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
11 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
12 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
13 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
14 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

15 26. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
16 to collect or receive from an employee any part of wages theretofore paid by said employer to
17 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and the
18 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
19 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the deductions
20 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
21 fails to pay these employees all wages due at each applicable pay period and upon termination.

22 27. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
23 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
24 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging
25 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
26 are required to indemnify employees for all expenses incurred in the course and scope of their
27 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
28 her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
2 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
3 believed them to be unlawful."

4 28. In the course of their employment PLAINTIFF and the AGGRIEVED
5 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
6 cellular phones as a result of and in furtherance of their job duties as employees for
7 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
8 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
9 PLAINTIFF and the AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
10 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
11 PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
12 which included, but were not limited to, costs related to the use of their personal cellular phones
13 all on behalf of and for the benefit of DEFENDANT.

14 29. All of the conduct and violations alleged herein occurred during the PAGA
15 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
17 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018.

18 **JURISDICTION AND VENUE**

19 30. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10.

21 31. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
23 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
24 in this County and/or conducts substantial business in this County, and (ii) committed the
25 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED
26 EMPLOYEES.

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1 Jude Hospital) of the specific provisions of this code alleged to have been violated as
2 required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these
3 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
4 PLAINTIFF may now commence a representative civil action under PAGA pursuant to
5 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
6 EMPLOYEES as herein defined.

7 36. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
9 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
10 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
11 (d) failed to pay overtime wages and sick pay wages, and (e) failed to reimburse for required
12 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
13 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197,
14 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision
15 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a
16 result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as
17 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
18 the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES.

20 21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
23 severally, as follows:

24 1. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:

26 A) Recovery of civil penalties as prescribed by the Labor Code Private

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 Attorneys General Act of 2004; and,

2 B) An award of attorneys' fees and cost of suit, as allowable under the
3 law, including, but not limited to, pursuant to Labor Code §2699.

4
5 Dated: April 27, 2022 BLUMENTHAL NORDREHAUG BHOWMIK
6 DE BLOUW LLP

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8 By: /s/ Nicholas De Blouw
9 Nicholas J. De Blouw
10 Attorneys for Plaintiff
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