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Attorneys for Plaintiff WINIFRED ALLISON
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

WINIFRED ALLISON, on behalf of herself and
other aggrieved employees,

Plaintiff,

vs.

BARLOW RESPIRATORY HOSPITAL.; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: **22STCV34472**

PAGA ACTION

**PLAINTIFF WINIFRED ALLISON'S
COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

COME NOW Plaintiff WINIFRED ALLISON ("Plaintiff"), who alleges and complains
against Defendants BARLOW RESPIRATORY HOSPITAL and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
("PAGA"). representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly, non-
exempt employees, in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendant's failure to pay wages for all

1 hours worked at the employees' minimum wage rate, failure to provide all legally required and
2 legally compliant meal and rest periods, failure to timely pay earned wages during employment,
3 failure to provide complete and accurate wage statements, failure to timely pay all unpaid wages
4 following separation of employment. Plaintiff seeks on a representative basis, following notice to
5 the Labor and Workforce Development Agency, civil penalties, reasonable attorney's fees
6 pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of
7 California, and others aggrieved.

8 **II. JURISDICTION AND VENUE**

9 2. This Court has jurisdiction over Plaintiff and the Class Members' claims because
10 Plaintiff's lawsuit seeks damages in excess of \$25,000; Defendants employed Plaintiff and all
11 other current and former aggrieved California-based hourly non-exempt employees; and the
12 injuries to Plaintiff and all other current and former aggrieved California-based hourly non-exempt
13 employees occurred in locations throughout California, including but not limited to Los Angeles
14 County, at 15107 Vanowen St., Van Nuys, CA 91405.

15 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
16 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
17 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
18 tolled from April 6, 2020, until October 1, 2020.

19 **III. PARTIES**

20 4. Plaintiff brings this action as a representative of the Labor and Workforce
21 Development Agency on behalf of herself and other current and former employees subject to
22 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
23 filed include current, former and/or future employees of Defendants who worked, work, or will
24 work for Defendants as non-exempt hourly employees in California. At all times mentioned
25 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
26 and was employed by Defendants in an hourly position at Defendants' location in Los Angeles
27 from approximately June 2007 until her termination on or about August 31, 2021.

28 5. Plaintiff is informed and believes and thereon alleges that Defendant BARLOW

1 RESPIRATORY HOSPITAL is authorized to do business within the State of California and is
2 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
3 relevant hereto were persons acting on behalf of Defendant BARLOW RESPIRATORY
4 HOSPITAL in the establishment of, or ratification of, the aforementioned illegal wage and hour
5 practices or policies. Defendant BARLOW RESPIRATORY HOSPITAL operates in Los Angeles
6 County and employed Plaintiff and aggrieved employees in Los Angeles County, including but
7 not limited to, at 15107 Vanowen St., Van Nuys, CA 91405.

8 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
9 through 50 are corporations, or are other business entities or organizations of a nature unknown to
10 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
11 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
12 working conditions of employment of Plaintiff and aggrieved employees.

13 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
14 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
15 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
16 supervisor, independent contractor and/or employee of each defendant who violated or caused to
17 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
18 the Industrial Welfare Commission's wage orders regulating hours and days of work.

19 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
20 sues said defendants by said fictitious names, and will amend this complaint when the true names
21 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
22 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
23 named defendants is in some manner responsible for the events and allegations set forth in this
24 complaint.

25 9. Plaintiff makes the allegations in this complaint without any admission that, as to
26 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
27 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

28 //

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

3 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

4 **(Against all Defendants)**

5 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

6 11. During the period beginning one-year period preceding the sending of the initial
7 notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204,
8 226, 226.7, 512, 1194, and 1197, and the applicable Wage Orders.

9 12. Specifically, Defendants have committed the following violations of California
10 Labor Code:

11 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
12 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
13 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
14 which includes all time that an employee is under control of the employer and all time the
15 employee is suffered and permitted to work. This includes the time an employee spends, either
16 directly or indirectly, performing services which inure to the benefit of the employer.

17 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
18 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
19 Wage Orders.

20 15. In this case, Plaintiff and other current and former aggrieved California-based
21 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
22 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
23 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
24 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
25 not limited to:

26 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
27 non-exempt employees to remain on the premises during their meal periods and on standby to be
28 readily available to service Defendants’ patients during their meal periods, resulting in meal

1 periods that were not duty-free; and

2 (b) (b) Failing to authorize or permit Plaintiff and other current and former aggrieved
3 California-based hourly non-exempt employees a second, uninterrupted duty-free meal period of
4 no less than thirty (30) minutes for each five-hour period of work as required by law.

5 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
6 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
7 control without paying wages for that time. This resulted in Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt employees working time for which they were not
9 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
10 Wage Order.

11 17. **Failure to pay wages to hourly non-exempt employees for workdays that**
12 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
13 current and former aggrieved California-based hourly non-exempt employees regularly worked
14 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

15 18. California law requires an employer to authorize or permit an employee an
16 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
17 all duties and the employer relinquishes control over the employee's activities prior to the
18 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 5 at §11; *Brinker*
19 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
20 employee for a work period of more than ten (10) hours per day without providing the employee
21 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
22 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
23 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
24 period is only permitted when: (1) the nature of the work prevents an employee from being
25 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

26 19. If an employer fails to provide an employee a meal period in accordance with the
27 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
28 for each workday that a legally required and compliant meal period was not provided. Labor Code

1 section 226.7; Wage Order 5 at §11.

2 20. In this case, Defendants failed to authorize or permit legally required and compliant
3 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
4 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
5 limited to:

6 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employees to remain on the premises during their meal periods and on standby to be
8 readily available to service Defendants' patients during their meal periods, resulting in meal
9 periods that were not duty-free; and

10 (b) Failing to authorize or permit Plaintiff and other current and former aggrieved
11 California-based hourly non-exempt employees a second, uninterrupted duty-free meal period of
12 no less than thirty (30) minutes for each five-hour period of work as required by law.

13 21. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
14 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
15 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
16 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
17 employees did not receive legally required and compliant meal periods, in violation of Labor Code
18 section 226.7.

19 22. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
20 and other current and former aggrieved California-based hourly non-exempt employees not
21 receiving wages to compensate them for workdays during which Defendants did not provide them
22 with meal periods in compliance with California law.

23 23. **Failure to pay wages to hourly non-exempt employees for workdays that**
24 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
25 current and former aggrieved California-based hourly non-exempt employees regularly worked
26 shifts of more than three-and-a-half (3.5) hours.

27 24. California law requires every employer to authorize and permit an employee a rest
28 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor

1 Code section 226.7; Wage Order 5 at §12. Under California law, “[e]mployees are entitled to 10
2 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
3 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
4 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
5 section 226.7; Wage Order 5 at §12. Rest periods, insofar as practicable, shall be in the middle of
6 each work period. Wage Order 5 at §12. Additionally, the rest period requirement “obligates
7 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
8 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
9 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

10 25. If the employer fails to authorize or permit a required rest period, the employer
11 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
12 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
13 Wage Order 5 at § 12.

14 26. In this case, Defendants failed to authorize or permit all legally required and
15 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
16 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
17 limited to:

18 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
19 non-exempt employees to remain on the premises during their rest periods and on standby to be
20 readily available to service Defendants’ patients during their rest periods, resulting in rest periods
21 that were not duty-free.

22 27. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
23 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
24 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
25 workday they did not receive legally required and compliant rest periods, , in violation of Labor
26 Code section 226.7.

27 28. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
28 and other current and former aggrieved California-based hourly non-exempt employees not

1 receiving wages to compensate them for workdays in which Defendants did not provide them with
2 rest periods in compliance with California law.

3 **29. Failure to timely pay earned wages during employment:** In California, wages
4 must be paid at least twice during each calendar month on days designated in advance by the
5 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
6 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
7 16th and the 26th day of that month and wages earned between the 16th and the last day,
8 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
9 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
10 paid within seven (7) calendar days following the close of the payroll period in which wages were
11 earned. Labor Code section 204(d).

12 **30.** As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
13 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
14 exempt employees' earned wages (including minimum wages, meal period premium wages and/or
15 rest period premium wages), in violation of Labor Code section 204. Defendants' aforementioned
16 policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and other current
17 and former aggrieved California-based hourly non-exempt employees' their earned wages within
18 the applicable time frames outlined in Labor Code section 204.

19 **31. Failure to provide complete and accurate wage statements:** Labor Code section
20 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
21 employee his or her wages, the employer must "furnish each of his or her employees ... an
22 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
23 employee, except for any employee whose compensation is solely based on a salary and who is
24 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
25 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
26 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
27 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
28 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the

1 name of the employee and his or her social security number, (8) the name and address of the legal
2 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
3 the corresponding number of hours worked at each hourly rate by the employee.”

4 32. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
5 and other current and former aggrieved California-based hourly non-exempt employees all wages
6 earned (including minimum wages, meal period premium wages, and/or rest period premium
7 wages) rendered Plaintiff’s and other current and former aggrieved California-based hourly non-
8 exempt employees’ wage statements inaccurate, in violation of Labor Code section 226.

9 33. **Failure to pay employees all wages due at time of termination/resignation:** An
10 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
11 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
12 hours of resignation (Labor Code section 202).

13 34. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
14 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
15 all their earned wages (including minimum wages, meal period premium wages, and/or rest period
16 premium wages), Defendants failed to pay those employees timely after each employee’s
17 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

18 35. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
19 employee, on behalf of himself or herself and other current or former employees, to bring a civil
20 action to recover civil penalties against all Defendants pursuant to the procedures specified in
21 Labor Code section 2699.3.

22 36. Plaintiff has complied with the procedures for bringing suit specified in Labor
23 Code section 2699.3. on January 31, 2022, Plaintiff filed notice with LWDA and provided notice
24 to Defendants by certified mail which provided notice of the specific provisions of the Labor Code
25 alleged to have been violated, including the facts and theories to support the violations alleged.

26 37. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
27 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
28 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the

1 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
2 Plaintiff's claims.

3 38. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
4 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 512,
5 1194, and 1197, and the applicable Wage Orders. during the Civil Penalty Period in the following
6 amounts:

7 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512;
8 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
9 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
10 violation [penalty amounts established by Labor Code section 2699(f)(2)].

11 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
12 for each employee for each pay period for the initial violation, and for each subsequent violation,
13 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
14 established by Labor Code section 226.3].

15 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
16 employee for each pay period for the initial violation, and for each subsequent violation, one
17 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
18 established by Labor Code section 558] and any unpaid wages.

19 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
20 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
21 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
22 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

23 39. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
24 reasonable attorney's fees and costs in connection with her claims for civil penalties

25 **PRAYER FOR RELIEF**

26 **WHEREFORE, PLAINTIFF, ON HER BEHALF AND ON OTHER AGGRIEVED PRAYS**
27 **AS FOLLOWS:**

28 **ON THE FIRST CAUSE OF ACTION:**

1 1. That the Defendants be found to have violated the provisions of the Labor Code
2 and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

3 2. For any and all legally applicable penalties during the relevant statute of limitations
4 subject to any permissible tolling, including but not limited to that recoverable under California
5 Labor Code, including but not limited to sections 2699(f).

6 3. For attorneys' fees and costs of suit, including but not limited to that recoverable
7 under California Labor Code section 2699(g); and,

8 4. For such and other further relief, in law and/or equity, as the Court deems just or
9 appropriate

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11 Dated: October 27, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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13 By: 
14 Joseph Lavi, Esq.
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17 Attorneys for Plaintiff
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20 aggrieved employees
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