

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
LIANE KATZENSTEIN LY, Esq. (SBN 259230)
liane@kingsleykingsley.com
JESSICA BULAON, Esq. (SBN 340749)
jessi@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

ABRAMSON LABOR GROUP
WILLIAM ZEV ABRAMSON, Esq. (SBN 289387)
Wza@abramsonlabor.com
3580 Wilshire Blvd., Ste 1260
Contra Costa, CA 90010-2513
Tel: (213) 493-6300, Fax (213) 382-4083

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ANTHONY SHIELDS, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

VISTA BEHAVIORAL HOSPITAL, LLC
DBA PACIFIC GROVE HOSPITAL; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. CVRI2202551

[Case Assigned for All Purposes to the Hon.
Harold W. Hopp in Dept. 10]

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
2. Violation of Labor Code § 226(a)
3. Penalties Pursuant to Labor Code § 203
4. Violation of Business & Professions Code § 17200
5. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff ANTHONY SHIELDS, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant VISTA BEHAVIORAL HOSPITAL, LLC DBA PACIFIC GROVE
5 HOSPITAL (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as a non-
11 exempt employee by VISTA BEHAVIORAL HOSPITAL, LLC
12 DBA PACIFIC GROVE HOSPITAL, in the State of California who
13 worked one or more pay periods since four (4) years prior to the
14 filing of this action to the present plus any additional time during
15 which the statutes of limitation for the causes of action herein were
16 tolled pursuant to Emergency Rule 9 of the California Rules of
17 Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed
18 Class”)

19 2. Any limitations period referenced in this complaint is extended pursuant to
20 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
21 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
22 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
23 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
24 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
25 relevant time period or statute of limitations referenced in this complaint is extended into the past
26 by the number of days in which this tolling was in effect.

27 3. From at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendant has had a consistent policy and practice of: (1) failing to provide Plaintiff and
the Proposed Class with compliant meal periods in violation of Labor Code §§ 226.7 and 512; and
(2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of
compensation for each workday that the complaint meal period was not provided. When Defendant

1 failed to provide meal periods as required by law, Defendant paid meal period premiums. When
2 meal period premiums were provided, Defendant has had a consistent policy of paying meal period
3 premiums at the base rate and not blended rate in violation of Labor Code §§ 226.7 and 512.

4 4. For at least one (1) year prior to the filing of this action continuing to the present,
5 Defendant has failed to comply with Labor Code § 226(a) by failing to issue Plaintiff and the
6 Proposed Class accurate itemized wage statements that show all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by the
8 employee. This is because, Plaintiff and the Proposed Class members are issued itemized wage
9 statements that do not accurately include meal period premiums at the accurate rate as a result of
10 the claims alleged herein.

11 5. For at least three (3) years prior to the filing of this action continuing to the present,
12 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
13 the Proposed Class.

14 6. Plaintiff, on behalf of himself and all Proposed Class members brings this action
15 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, and 512; Wage Order 5-2001; and
16 California Code of Regulations, Title 8, Section 11050, seeking unpaid meal period penalties,
17 accurate itemized wage statements, all wages due upon termination, other penalties, injunctive and
18 other equitable relief, and reasonable attorneys' fees and costs.

19 7. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
20 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
21 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

22 8. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
23 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
24 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
25 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
26 pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or
27 formerly employed by Defendant during the liability period as defined in his PAGA notice letters
28 (see Exhibit "1"), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking

1 penalties for Defendant's violations of Labor §§ 201, 202, 203, 226(a), 226.7, and 512.

2 **II.**

3 **JURISDICTION AND VENUE**

4 9. This Court has subject matter jurisdiction over all causes of action asserted herein
5 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
6 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
7 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
8 State of California or is subject to adjudication in the courts of the State of California.

9 10. This Court has personal jurisdiction over Defendant because Defendant has caused
10 injuries in the County of Riverside and the State of California through their acts, and by their
11 violation of the California Labor Code, California state common law, and California Business &
12 Professions Code § 17200, *et seq.*

13 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
14 Civil Procedure § 395. Defendant operates within California and does business within Riverside
15 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
16 members within the State of California and the county of Riverside.

17 12. This case should be classified as complex according to Rule 3.400 of the California
18 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
19 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
20 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
21 require substantial post judgment judicial supervision.

22 13. Plaintiff files this amended complaint adding a claim for penalties pursuant to
23 Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

24 **III.**

25 **PARTIES**

26 **A. PLAINTIFF**

27 14. Plaintiff ANTHONY SHIELDS is a resident of California.

28 15. Plaintiff and all Proposed Class members, were regularly required to:

- 1 a. Work without being provided meal periods paid at the appropriate rate;
2 b. Work without being provided an accurate itemized wage statements as
3 required by California law.

4 16. As a result of the allegations alleged regarding meal period premiums, Defendant
5 willfully failed to compensate Plaintiff and all Proposed Class members for wages at the
6 termination of their employment with Defendant.

7 17. As a result of this conduct, Defendant has engaged in unfair competition and
8 unlawful business practices.

9 18. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
10 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
11 §2699(c).)

12 **B. DEFENDANTS**

13 19. Defendant VISTA BEHAVIORAL HOSPITAL, LLC DBA PACIFIC GROVE
14 HOSPITAL is believed to be a Delaware corporation operating within the State of California.
15 Defendant’s corporate address is believed to be 6100 Tower Circle, Suite 1000 Franklin, TN
16 37067. Upon information and belief, Defendant employed Plaintiff and similarly situated persons
17 as hourly employees within California. Defendant has done and does business throughout the
18 State of California.

19 20. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
21 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
22 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
23 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
24 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
25 capacities of the Defendants designated hereinafter as DOES when such identities become known.

26 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
28 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are

1 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
2 employer and/or joint employer of Plaintiff and the Proposed Class members.

3 22. Furthermore, Defendants acted in all respects as the employers or joint employers
4 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
5 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
6 engaged, thereby creating a common law employment relationship, with the Proposed Class.
7 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

8 IV.

9 FACTUAL BACKGROUND

10 23. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
11 classified as non-exempt employees by Defendant. Defendant hires employees who work as
12 hourly employees who are paid on an hourly basis.

13 24. Upon information and belief, Plaintiff and the Proposed Class are covered by
14 California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal.
15 Code of Regs. § 11050).

16 25. Plaintiff and all Proposed Class members have been forced by Defendant to work
17 over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal
18 break, and when this occurred and meal period premiums were paid, Plaintiff and the Proposed
19 Class members were not compensated one (1) hour of pay at their regular rate of compensation all
20 in violation of California labor laws, regulations, and Industrial Welfare Commission Wage
21 Orders. When meal period premiums were provided, Defendant has had a consistent policy of paying
22 meal period premiums at the base rate and not blended rate in violation of Labor Code §§ 226.7 and 512.

23 26. Defendant has failed to comply with Industrial Welfare Commission (“IWC”)
24 Wage Order 5-2001(7) and Labor Code § 226(a) by failing to issue Plaintiff and all the Proposed
25 Class statements that show total hours worked and all applicable hourly rates in effect during the
26 pay period and the corresponding number of hours worked at each hourly rate by the employee.
27 This is because, Plaintiff and the Proposed Class are issued itemized wage statements that do not
28 accurately include meal premiums at the proper rate. As such, it is impossible for Plaintiff and the

1 Proposed Class to tell their accurate rates of pay from the itemized wage statements alone all in
2 violation of Labor Code 226(a).

3 27. As a result of the meal period violations alleged, Defendant willfully failed to pay
4 wages and compensation, when Plaintiff and all Proposed Class members quit or were discharged.
5 This failure was willful, without legal justification, and interfered with Plaintiff's and Class
6 Members' rights.

7 28. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

8 **V.**

9 **CLASS ACTION ALLEGATIONS**

10 29. Plaintiff brings this action on behalf of himself and all others similarly situated as
11 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
12 proposed class composed of and defined as follows:

13 All persons who are employed or have been employed as a non-
14 exempt employee by VISTA BEHAVIORAL HOSPITAL, LLC
15 DBA PACIFIC GROVE HOSPITAL, in the State of California who
16 worked one or more pay periods since four (4) years prior to the
17 filing of this action to the present plus any additional time during
18 which the statutes of limitation for the causes of action herein were
tollled pursuant to Emergency Rule 9 of the California Rules of
Court, the 'Emergency Rules Related to COVID-19'. ("Proposed
Class")

19 30. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
20 amend or modify the class description with greater specificity, by division into subclasses, or by
21 limitation to particular issues.

22 31. This action has been brought and may properly be maintained as a class action
23 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
24 community of interest in the litigation and the Proposed Classes are easily ascertainable.

25 **A. NUMEROSITY**

26 32. The potential members of the Proposed Class as defined are so numerous that
27 joinder of all the members of the Proposed Class is impracticable. While the precise number of
28 proposed Class Members has not been determined at this time, Plaintiff is informed and believes

1 that Defendant currently employ, and during the relevant time periods employed over 50-100
2 members of the Proposed Class.

3 33. Plaintiff alleges that Defendant's employment records would provide information
4 as to the number and location of all Proposed Class members. Joinder of all members of the
5 Proposed Class is not practicable.

6 **B. COMMONALITY**

7 34. There are questions of law and fact common to the Proposed Class that predominate
8 over any questions affecting only individual Proposed Class members. These common questions
9 of law and fact include, without limitation:

10 a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5-
11 2001 or other applicable IWC Wage Orders by failing to properly compensate said employees one
12 (1) hour of wages at their regular rate of compensation in lieu of meal periods;

13 b. Whether Defendants violated Labor Code § 226(a) and Wage Order 5-2001
14 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11050 by failing to
15 provide accurate itemized wage statements to Plaintiff and the members of the Proposed Class;

16 c. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
17 compensation due and owing at the time that any Proposed Class Member's employment with
18 Defendant terminated;

19 d. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
20 Code by engaging in the acts previously alleged; and

21 e. Whether Plaintiff and the members of the Proposed Class are entitled to
22 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

23 f. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
24 acts alleged herein.

25 **C. TYPICALITY**

26 35. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
27 all members of the Proposed Class sustained injuries and damages arising out of and caused by
28 Defendant's common course of conduct in violation of laws, regulations that have the force and

1 effect of law, and statutes as alleged herein.

2 **D. ADEQUACY OF REPRESENTATION**

3 36. Plaintiff will fairly and adequately represent and protect the interests of the
4 members of the Proposed Class.

5 37. Counsel who represent Plaintiff and the Proposed Class are competent and
6 experienced in litigating large employment class actions.

7 **E. SUPERIORITY OF CLASS ACTION**

8 38. A class action is superior to other available means for the fair and efficient
9 adjudication of this controversy. Individual joinder of all Proposed Class members is not
10 practicable, and questions of law and fact common to the Proposed Class predominate over any
11 questions affecting only individual members of the Proposed Class. Each member of the Proposed
12 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
13 practice of failing to pay all wages due, failing to provide meal periods, failing to provide accurate
14 itemized wage statements, and failing to pay all wages upon resignation or termination.

15 39. Class action treatment will allow those similarly situated persons to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial system.
17 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
18 action that would preclude its maintenance as a class action.

19 **VI.**

20 **FIRST CAUSE OF ACTION**

21 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

22 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

23 **LABOR CODE § 226.7 AND LABOR CODE § 512**

24 40. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
25 by reference all previous paragraphs.

26 41. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
27 compensation for each meal period the employer fails to provide. Employees are entitled to a first
28 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the

1 first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide
2 an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay
3 at the employee's regular rate of compensation for each workday that a thirty (30) minute
4 uninterrupted meal period was not provided, was not provided in full, or was not provided in a
5 timely manner.

6 42. Further, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California
7 Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are
8 owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held
9 that those premium payments must include the hourly value of any nondiscretionary earnings (such as a
10 nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.

11 43. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
12 Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less
13 than thirty (30) minutes as required by the Labor Code during the relevant time period.

14 44. When Defendant failed to provide these meal periods, Defendant has had a
15 consistent policy of failing to pay Plaintiff and the Proposed Class one (1) hour of pay at the
16 employees' regular rate of compensation. Specifically, Defendant has had a consistent policy of
17 paying meal period premiums at the base rate and not the appropriate blended rate in violation of
18 Labor Code §§ 226.7 and 512.

19 45. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
20 damages in an amount equal to the difference between the premium paid by Defendant and the
21 amount that should have been paid, per day in a sum to be proven at trial.

22 **VII.**

23 **SECOND CAUSE OF ACTION**

24 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

25 **VIOLATION OF LABOR CODE § 226(A)**

26 46. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
27 by reference all previous paragraphs.

28 47. California Labor Code § 226(a) requires that every employer shall semimonthly or

1 at the time of each payment of wages, furnish each of his or her employees, an accurate itemized
2 statement in writing showing total hours worked and all applicable hourly rates in effect during
3 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
4 Sections 226(a)(9).

5 48. Plaintiff and the Proposed Class are issued wage statements that do not include all
6 applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee in violation of the Labor Code.

8 49. This is because Plaintiff and the Proposed Class are issued wage statements that do
9 not include meal premiums at the accurate rate.

10 50. As such, it is impossible for Plaintiff and the Proposed Class to tell their accurate
11 rates of pay from the itemized wage statements alone all in violation of Labor Code 226(a).

12 51. Defendant's failure to provide accurate itemized wages statements according to
13 Labor Code § 226(a) was all done on a regular and consistent basis.

14 52. An employee suffering injury as a result of a knowing and intentional failure by an
15 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
16 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
17 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
18 aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and
19 reasonable attorneys' fees.

20 VIII.

21 THIRD CAUSE OF ACTION

22 PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

23 WAITING TIME PENALTIES UNDER LABOR CODE § 203

24 53. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
25 by reference all previous paragraphs.

26 54. Numerous members of the Proposed Class including the Plaintiff are no longer
27 employed by Defendant. They were either fired or quit Defendant's employ.

28 55. Defendant's failure to pay wages, as alleged above was willful in that Defendant

1 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
2 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
3 penalty until paid for a period of up to thirty (30) days from the time they were due.

4 56. Defendant has failed to pay Plaintiff and others a sum certain at the time of
5 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
6 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
7 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
8 members' daily wage multiplied by thirty (30) days.

9 **IX.**

10 **FOURTH CAUSE OF ACTION**

11 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

12 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

13 57. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
14 by reference all previous paragraphs.

15 58. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
16 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
17 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
18 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
19 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
20 interest within the meaning of Code of Civil Procedure § 1021.5.

21 59. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
22 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
23 appropriate equitable relief.

24 60. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
25 practices.

26 61. California's wage and hour laws express fundamental public policies. Providing
27 employees with proper wages and compensation are fundamental public policies of this State and
28 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce

1 vigorously minimum labor standards, to ensure that employees are not required or permitted to
2 work under substandard and unlawful conditions, and to protect law-abiding employers and their
3 employees from competitors who lower their costs by failing to comply with minimum labor
4 standards.

5 62. Defendant has violated statutes and public policies as alleged herein. Through the
6 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
7 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
8 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
9 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
10 guaranteed to all employees under law.

11 63. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
12 violation of § 17200, *et seq.* of the Business & Professions Code.

13 64. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
14 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
15 § 17200, *et seq.* of the Business & Professions Code.

16 65. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
17 others similarly situated have been damaged in a sum as may be proven.

18 66. Unless restrained, Defendant will continue to engage in the unlawful conduct as
19 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
20 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
21 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
22 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
23 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
24 Proposed Class the money Defendant has unlawfully failed to pay.

25 **X.**

26 **FIFTH CAUSE OF ACTION**

27 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

28 67. Plaintiff, on behalf of himself and all aggrieved employees, realleges and

incorporates by reference all previous paragraphs.

68. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* use of Defendant’s violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, and 512; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050, which call for civil penalties.

69. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

70. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

71. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant’s entity address, which is 6100 Tower Circle, Suite 1000, Franklin TN 37067, and 5900 Brockton Ave, Riverside, CA 92506. as proscribed by the Code on June 22, 2022, describing Defendant’s conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, and 512. (*see* Exhibit “1.”) Plaintiff also uploaded a notice letter to the LWDA and mailed a letter by certified mail to the Agent for Service of Process, 1505 Corporation 112 C T Corporation System, for Defendant as listed on the Secretary of State website² located at 330 N Brand Blvd Ste 700, Glendale, CA 91203 as proscribed by the Code on June 22, 2022, describing Defendant’s conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, and 512. (*see* Exhibit “1.”) Plaintiff received signed green return receipts from Defendant, indicating that it received Plaintiff’s notice letter. (*see* Exhibit “2.”) Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit “3”).

72. As no letter evidencing the LWDA’s intention to investigate was received by Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

² <https://bizfileonline.sos.ca.gov/search/business>

1 action as though the LWDA had not chosen to investigate pursuant to Labor Code
2 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
3 Amended Class and Representative Action Complaint immediately.

4 **RELIEF REQUESTED**

5 **WHEREFORE**, Plaintiff prays for the following relief:

6 1. For compensatory damages in the amount of the difference between the meal period
7 premium paid by Defendant and Plaintiff's and each Proposed Class members' hourly wage at the
8 appropriate regular rate of compensation for each meal period missed or taken late from at least
9 four (4) years prior to the filing of this action to the present as may be proven;

10 2. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
11 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
12 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
13 an aggregate penalty of four thousand dollars (\$4,000);

14 3. For penalties pursuant to Labor Code § 203 for all employees who were terminated
15 or resigned equal to their daily wage times thirty (30) days;

16 4. An award of prejudgment and post judgment interest;

17 5. An order enjoining Defendant and its agents, servants, and employees, and all
18 persons acting under, in concert with, or for it from providing Plaintiff with proper meal periods,
19 accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor
20 Code §§ 201, 202, 203, 226(a), 226.7, 512, and IWC 5-2001;

21 6. For restitution for unfair competition pursuant to Business & Professions Code
22 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

23 7. For penalties under Labor Code § 2699, *et seq.* for Defendant's violation of Labor
24 Code §§ 201, 202, 203, 226(a), 226.7, and 512 and Wage Order 5-2001;

25 8. An award providing for payment of costs of suit;

26 9. An award of attorneys' fees; and

27 10. Such other and further relief as this Court may deem proper and just.

28 **DEMAND FOR JURY TRIAL**

1 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.
2

3 DATED: October 12, 2022

KINGSLEY & KINGSLEY, APC

4
5 By: 

Liane Katzenstein Ly

6 Attorneys for Plaintiff Anthony Shields and the
7 Proposed Class
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

June 22, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Vista Behavioral Hospital, LLC
dba Pacific Grove Hospital
6100 Tower Circle, Suite 1000
Franklin, TN 37067
Via USPS Certified Mail# 7019 2970 0001 4016 6483

Vista Behavioral Hospital, LLC
dba Pacific Grove Hospital
5900 Brockton Ave
Riverside, CA 92506
Via USPS Certified Mail# 7019 2970 0001 4016 6490

Vista Behavioral Hospital, LLC
dba Pacific Grove Hospital
c/o Agent for Service of Process
C T CORPORATION SYSTEM
330 N Brand Blvd Ste 700
Glendale, CA 91203
Via USPS Certified Mail# 7019 2970 0001 4016 6506

Re: Anthony Shields v. Vista Behavioral Hospital, LLC dba Pacific Grove Hospital
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Anthony Shields (“Plaintiff”) and a proposed group of current and former employees working for Vista Behavioral Hospital, LLC dba Pacific Grove Hospital (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by Vista Behavioral Hospital, LLC dba Pacific

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 22, 2022

Page 2 of 3

Grove Hospital, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate.

Here, Defendant has had a consistent policy and practice of: (1) failing to provide Plaintiff and the aggrieved employees with compliant meal periods in violation of Labor Code §§ 226.7 and 512; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the complaint meal period was not provided. On shifts where a meal period was not provided, Defendant had a policy of paying premiums. When meal period premiums were provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not blended rate in violation of Labor Code §§ 226.7 and 512.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) by failing to issue Plaintiff and all aggrieved employees wage statements that show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Further, Plaintiff and all aggrieved employees are issued itemized wage statements that do not

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 22, 2022

Page 3 of 3

accurately include meal premiums at the proper rate. As such, it is impossible for Plaintiff and the aggrieved employees to tell their accurate rates of pay from the itemized wage statements alone all in violation of Labor Code 226(a). Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, and 512 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: _____

Liane Katzenstein Ly

LKL/km

Cc: 1. Abramson Labor Group, 3580 Wilshire Blvd Ste 1260, Los Angeles, CA 90010-2513

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Vista Behavioral Hospital, LLC dba Pacific
Grove Hospital
6100 Tower Circle, Suite 1000
Franklin, TN 37067



9590 9402 7136 1251 6492 78

2. Article Number (Transfer from service label)

7019 2970 0001 4016 6483

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Handwritten Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Mail Restricted Delivery | |

00)

Domestic Return Receipt

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

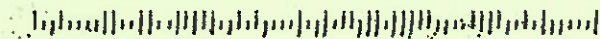
9590 9402 7136 1251 6492 78

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
VISTA BEHAVIORAL HOSPITAL, LLC DBA PACIFIC GROVE HOSPITAL



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Vista Behavioral Hospital, LLC dba Pacific
Grove Hospital
c/o Agent for Service of Process
C T CORPORATION SYSTEM
330 N Brand Blvd Ste 700
Glendale, CA 91203



9590 9402 7136 1251 6492 54

2. Article Number (Transfer from service label)

7019 2970 0001 4016 6506

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

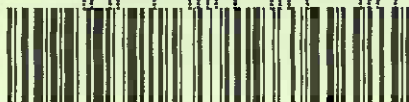
JUN 27 2022

Delivery Service

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Mail | |
| ☐ Mail Restricted Delivery | |
| ☐ (0) | |

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7136 1251 6492 54

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER

VISTA BEHAVIORAL HOSPITAL, LLC DBA PACIFIC GROVE HOSPITAL

EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley, APC



(Enter "in pro per" if you are representing yourself)

Your Email Address *

kimberly@kingsleykingsley

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Anthony Shields

Plaintiff/Aggrieved Employee Occupation *

non-exempt employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...



Employer Name *

Vista Behavioral Hospital, LLC dba Pacific Gro

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

6100 Tower Circle, Suite 1000

Franklin

Employer State *

Tennessee

Employer Zip/Postal Code *

37067

Employer Industry *

Other

Employer Industry for "Other" *

health care and hospitaliza

Add additional defendants☒ Add any entity other than an individual☐ Add an individual/sole proprietor employer**Additional Employer Information (Corporation/General Partnership)****Employer Entity Type**

Please select...

Employer Name *

Vista Behavioral Hospital, LLC dba Pacific Gr

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

5900 Brockton Ave

Employer City *

Riverside

Employer State *

California

Employer Zip/Postal Code *

92506

Employer Industry *

Other

Employer Industry for "Other" *

health care and hospitaliza

Additional Employer Information (Corporation/General Partnership)[Remove](#)**Employer Entity Type**

Please select...

Employer Name *

Vista Behavioral Hospital, LLC dba Pacific Gr

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

330 N Brand Blvd Ste 700

Employer City *

Glendale

Employer State *

California

Employer Zip/Postal Code *

91203

Employer Industry *

Other

Employer Industry for "Other" *

health care and hospitaliza

[Add Additional Employers](#)**Notice General Information****Estimated Number of Employees Impacted by Violations ***

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

kimberly@kingsleykingsley

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File PAGA Letter - ... Hospital.pdf

Other Attachment - (if any) (must be a .pdf)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)

[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, June 22, 2022 9:00 AM
To: Kimberly Madrid
Subject: Thank you for submission of your PAGA Case.

External Email!

6/22/2022

LWDA Case No. LWDA-CM-890682-22

Law Firm : Kingsley & Kingsley, APC

Plaintiff Name : Anthony Shields

Employer: Vista Behavioral Hospital, LLC dba Pacific Grove Hospital Filing Fee : \$75.00 IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Ckimberly%40kingsleykingsley.com%7Ce5b38b3f92884b89c71508da54684156%7C121a7875db4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637915103999358276%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDA%7CwMDA%7C%7C%7C&data=BT7ZqWenPQ9X%2BU4G%2FW08QATKjh7Sy04eHCQUJfNfH0w%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, June 22, 2022 9:00 AM
To: Kimberly Madrid
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-890682-22

Order Number: ORD-000175542

Total:\$75.00

Card Type: XXXXXXXXXX

Date: 6/22/2022

Billing Information

Name: Eric Kingsley

Email: kimberly@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436