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Attorneys for Plaintiff KARENA BUSH, on behalf of herself
and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

KARENA BUSH, on behalf of herself and
all others similarly situated and aggrieved,

Plaintiff,

v.

CALIFORNIA HEALTH CARE
FACILITY; and DOES 1 through 10,
Inclusive,

Defendants.

Case No. STK-CV-UOE-2022-11255

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1194.2, 1197, 1197.1 and the applicable IWC Wage Order, § 4)
2. Civil Penalties for Failure Pay Minimum Wages (Labor Code §§ 2698, *et seq.*)

DEMAND FOR JURY TRIAL

FILED

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BRANDON Z. WILEY, CLERK

BY

DEPUTY

1 Plaintiff KARENA BUSH ("Plaintiff"), on behalf of herself and all others similarly
2 situated, alleges as follows:

3 I.

4 INTRODUCTION

5 1. Plaintiff brings this action as a Class Action pursuant to California Code of Civil
6 Procedure section 382 on behalf of herself and other current and former non-exempt employees
7 of CALIFORNIA HEALTH CARE FACILITY ("CHCF" or "Defendant") and DOES 1 through
8 10, inclusive (collectively "Defendants"). Plaintiff brings this action for: payment of regular and
9 minimum wages; and statutory and civil penalties, interest and attorneys' fees and costs, under
10 California Labor Code sections 1194, 1194.2, 1197, and 1197.1.

11 2. Plaintiff also brings this lawsuit as a PAGA Representative Action on behalf of
12 the state of California, and aggrieved current and former employees. Pursuant to Labor Code
13 sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties, and reasonable attorney's fees
14 and costs. Plaintiff, by operation of law, has standing and capacity to sue as a representative of
15 the State of California. Plaintiff mailed written notice of the specific provisions of the code that
16 Defendants violated, including the facts and theories to support the alleged violations, to the
17 California Labor and Workforce Development Agency ("LWDA") and to CALIFORNIA
18 HEALTH CARE FACILITY on November 1, 2022. Defendants did not provide notice of cure
19 and the LWDA did not provide notice of investigation in the 65 days of the November 1, 2022
20 mailing of the PAGA notice.

21 3. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
22 current and former aggrieved employees of Defendants who suffered one or more of the alleged
23 violations ("aggrieved employees") as described herein during the applicable limitations period
24 for the time period covered by the PAGA. The applicable limitations period is referred herein as
25 "the PAGA Period."

26 4. Defendants have engaged in a systematic pattern of wage and hour abuse
27 towards Plaintiff and other current and former non-exempt employees by denying them specific
28 rights afforded to them under California law, including the California Labor Code and rules

1 promulgated by the Industrial Welfare Commission ("IWC") Wage Orders.

2 5. At all relevant times, Defendants maintained a uniform and consistent policy and
3 practice of failing to pay Plaintiff and similarly-situated and aggrieved non-exempt employees
4 minimum wages for all hours worked, in violation of California state wage and hour laws.

5 6. Plaintiff, on behalf of herself and all similarly-situated employees in the State of
6 California, brings this action pursuant to Labor Code sections 1194, 1194.2, 1197, 1197.1,
7 seeking unpaid wages, penalties, interest, and reasonable attorneys' fees and costs.

8 **II.**

9 **JURISDICTION AND VENUE**

10 7. Venue as to each Defendant is proper in this judicial district pursuant to Code of
11 Civil Procedure section 395(a). Defendants conduct business in San Joaquin County, and each
12 Defendant is within the jurisdiction of this Court for service of process purposes. Defendants
13 maintain offices, transact business, and/or have an agent in San Joaquin County and Defendants
14 are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful
15 acts alleged herein arose in San Joaquin County and have a direct effect on Plaintiff and other
16 similarly-situated employees within the State of California and within San Joaquin County.
17 Defendants employed Plaintiff and numerous similarly-situated employees and committed the
18 alleged violations in San Joaquin County.

19 8. The California Superior Court also has jurisdiction in this matter because
20 individual members of the classes are under the seventy-five thousand dollar (\$75,000.00)
21 jurisdictional threshold for Federal Court. There is no federal question at issue, as the issues are
22 based solely on California law, including the Labor Code, IWC Wage Orders, Code of Civil
23 Procedure, and Civil Code.

24 9. Plaintiff is also informed and believes that her individual PAGA claims do not
25 arise to the necessary amount in controversy so as to implicate traditional jurisdiction under 28
26 U.S.C. section 1332(a) or jurisdiction under the Class Action Fairness Act ("CAFA"), 28 U.S.C.
27 section 1332(d). Further as a representative action under the PAGA, the matter is not subject to
28 removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to

1 federal jurisdiction.

2 **III.**

3 **THE PARTIES**

4 **A. The Plaintiff**

5 10. Plaintiff KARENA BUSH is, and at all relevant times, was a resident of
6 Stockton in San Joaquin County, California, and was employed by Defendants in San Joaquin
7 County as an Environmental Services ("EVS") Specialist from approximately May 2018
8 through approximately November 2021.

9 **B. The Defendants**

10 11. Plaintiff is informed and believes and thereon alleges that CALIFORNIA
11 HEALTH CARE FACILITY is a state prison for incarcerated patients with long-term medical
12 needs or acute mental health needs operating in Stockton, California, and was the employer of
13 Plaintiff and the members of Class, during the relevant time period. Defendants' conduct, as
14 herein alleged, occurred in the County of San Joaquin, California. Plaintiff is informed and
15 believes and thereon alleges that Defendants are, and at all relevant times, were authorized to do
16 business and doing business in the State of California, and were employers as defined in and
17 subject to specific provisions of the California Labor Code and Industrial Welfare Commission
18 Wage Orders.

19 12. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Defendants sued here in as DOES 1 through 10, inclusive, are currently unknown
21 to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil
22 Procedure section 474. Plaintiff is informed and believes, and based on that alleges, each of the
23 Defendants designated as a DOE is legally responsible in some manner for the unlawful acts
24 alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
25 capacities of the Defendants designated as DOES when those identities become known.

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

1 the other Defendants.

2 IV.

3 **GENERAL ALLEGATIONS**

4 14. During all, or a portion of the Class and PAGA Periods, Plaintiff and each
5 member of the Class and other aggrieved employee were employed by Defendants and each of
6 them, in the State of California.

7 15. Plaintiff commenced her employment with Defendants in May 2018 as an EVS
8 Specialist in Stockton, California. Plaintiff's employment ended in November 2021.

9 16. California Labor Code section 1194 provides that notwithstanding any
10 agreement to work for a lesser wage, and employee receiving less than the legal minimum wage
11 is entitled to recover in a civil action the full amount of the minimum wages, including interest
12 thereon, reasonable attorneys' fees, and costs of suit. Labor Code section 1194.2 provides for
13 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon
14 when an employer fails to pay the minimum wage fixed by an order of the commission or
15 statute.

16 17. Plaintiff and each Class member and other aggrieved employee were non-exempt
17 employees covered under one or more Industrial Welfare Commission ("IWC") Wage Orders,
18 including section 4 of the applicable Wage Order, and Labor Code sections 1194, 1197, and
19 each Class Member and other aggrieved employee was not subject to an exemption for
20 executive, administrative, professional employees, or any other exemption, which imposed an
21 obligation on the part of the Defendants to pay Plaintiff, Class Members, and other aggrieved
22 employees all lawful wages.

23 18. During all, or portions, of the Class and PAGA Periods, Defendants failed to pay
24 Plaintiff and other similarly-situated and aggrieved employees minimum wages for all hours
25 worked, in violation of Labor Code sections 1194 and 1197, and section 4 of the applicable IWC
26 Wage Order. Plaintiff and other similarly-situated and aggrieved employees are required to wait
27 in line for, and undergo, mandatory COVID-19 screenings before entering the prison but did not
28 received compensation of all applicable minimum wages for this time spent under the direction

1 and control of Defendants.

2 19. During all, or portions, of the Class and PAGA Periods, Defendants required
3 their employees, including Plaintiff, to walk through a security line for identification checks in
4 order to enter and exit the location of work. Plaintiff and other similarly-situated and aggrieved
5 employees were required to go through two identification security checks on each shift. Going
6 through the security line and identification checks was non-negotiable and at all times, Plaintiff
7 and others similarly situated and aggrieved were under the direction and control of Defendants.
8 The identification and security line checks were conducted before and after each shift worked
9 and were mandatory. Plaintiff and others similarly situated and aggrieved were not paid for all
10 the time spent proceeding through the identification and security line checks.

11 20. Accordingly, Plaintiff and others similarly situated and aggrieved were not paid
12 all minimum wages for this time spent working, including the time spent waiting undergo
13 COVID-19 screenings and the time spent proceeding through the identification and security
14 line. As a result, Defendants have failed to pay all minimum wages for hours worked.

15 21. During all, or portions, of the Class and PAGA Periods, Defendants subjected all
16 non-exempt hourly employees, including Plaintiff, to a uniform policy and practice of unlawful
17 time rounding, resulting in the underpayment of wages, including minimum wages, on a
18 systematic basis. This rounding policy was not neutral on its face or in application and resulted
19 in a cumulative loss of time and wages to Plaintiff, members of the Class, and other aggrieved
20 employees. Plaintiff and those and others similarly situated and aggrieved were required to
21 record their hours worked rounded to the nearest hour as opposed to *actual* hours worked.
22 Despite being readily capable and able to use precise timeclock entries for all "hours worked,"
23 Defendants disregarded actual time worked and issued pay checks and wage statements that
24 systematically reflected rounded time as a basis to underpay their employees. Defendants'
25 rounding policy resulted in underpayment for all straight-time worked. On information and
26 belief, Defendants' rounding policy operated unilaterally to the benefit of Defendants and to
27 detriment of Plaintiff, members of the Class, and other aggrieved employees.

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V.

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The Class Plaintiff seeks to represent are defined as:

Class

All non-exempt employees employed by Defendants in the State of California at any time since the four years preceding the filing of this Complaint.

23. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, and other applicable law to amend or modify the class definition with greater specificity or further division into subclasses or limitation to particular issues. Plaintiff is a member of the proposed Class.

24. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

25. **Ascertainable Class:** The potential members of the Class are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

26. **Numerosity:** The potential members of the Class, defined above, are so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit both the parties and this Court. The number of members of the Class is unknown to Plaintiff but is estimated to be in excess of 100 individuals. The number and identity of members can be readily ascertained using Defendants' records.

27. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class because all members of the Class sustained similar injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Class were caused by Defendants' wrongful conduct in violation of law, as alleged.

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5 29. **Superiority:** A class action is superior to other available means for the fair and
6 efficient adjudication of this controversy. Individual joinder of all Class Members is not
7 practicable, and questions of law and fact common to the Class predominate over questions
8 affecting only individual Class Members. Each Class Member has been damaged and is entitled
9 to recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum
10 wages. A class action will allow those similarly situated to litigate their claims in the most
11 efficient and economical manner for the parties and the judicial system. Plaintiff is unaware of
12 any difficulties likely to be encountered in the management of this action that precludes its
13 maintenance as a class action.

14 30. The predominating common questions of law and fact include, without
15 limitation: Whether Defendants compensated Class Members for all hours worked, including
16 minimum wages, pursuant to Labor Code sections 1194 and 1197, and section 4 of the
17 applicable IWC Wage Order.

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24 32. Labor Code section 1194 states: "Notwithstanding any agreement to work for a
25 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
26 compensation applicable to the employee is entitled to recover in a civil action the unpaid
27 balance of the full amount of his minimum wage or overtime compensation, including interest
28 thereon, reasonable attorney's fees and costs of suit."

1 33. Labor Code section 1194.2 states: "In any action under Section 98, 1193.6, 1194,
2 or 1197.1 to recover wages because of the payment of a wage less than the minimum wage
3 fixed by an order of the commission or by statute, an employee shall be entitled to recover
4 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

5 34. Labor Code section 1197 states: "The minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 minimum wage so fixed is unlawful."

8 35. The applicable IWC Wage Order, section 4 provides that an employer may not
9 pay employees less than the applicable minimum wage for all hours worked. Plaintiff and other
10 similarly situated employees are not exempt from section 4 of the applicable IWC Wage Order,
11 which requires employers to pay minimum wages for all hours worked.

12 36. At all times relevant to this action, Defendants failed to pay Plaintiff and other
13 similarly-situated employees minimum wages for all hours worked, in violation of Labor Code
14 sections 1194 and 1197, and section 4 of the applicable IWC Wage Order.

15 37. Defendants' unlawful acts deprived Plaintiff and members of the Class Plaintiff
16 seeks to represent of minimum wages in amounts to be determined at trial, and they are entitled
17 to recover these amounts, along with liquidated damages for unpaid regular or minimum wages,
18 interest, attorneys' fees, and costs.

19 38. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
20 of the unpaid wages resulting from Defendants' minimum wage violations including interest
21 thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the
22 fullest extent permissible including those permitted pursuant to Labor Code sections 218.6,
23 1194, 1194.2, and 1197.1, and Code of Civil Procedure section 1021.5.

24 39. Plaintiff, on behalf of herself and the members of the Class, requests relief as
25 described below.

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SECOND CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PAY MINIMUM WAGES
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee against All Defendants)

40. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

41. Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

42. Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

43. Labor Code section 1194(a) provides: "(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

44. Labor Code section 510, states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

45. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions,

1 commissions, boards, agencies, or employees, for a violation of this code, may, as an
2 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
3 himself or herself and other current or former employees pursuant to the procedures specified in
4 Section 2699.3.”

5 46. Labor Code section 2699(f)(2) states: “For all provisions of this code except
6 those for which a civil penalty is specifically provided, there is established a civil penalty for a
7 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
8 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
9 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
10 each aggrieved employee per pay period for each subsequent violation.”

11 47. As set forth herein, Defendants failed to pay all applicable minimum wages for
12 all hours worked by Plaintiff and other aggrieved employees.

13 48. Defendants’ conduct violates Labor Code sections 510, 1194, and 1197 as well
14 as the “Hours and Days of Work” and “Minimum Wages” sections of the applicable Wage
15 Order.

16 49. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
17 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
18 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney’s fees and costs
19 all recoverable in an amount according to proof.

20 50. Plaintiff, as a representative of the general public, will and does seek to recover
21 any and all penalties for each and every violation, in an amount according to proof, as to those
22 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
23 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
24 of California.

25 **VII.**

26 **PRAYER FOR RELIEF**

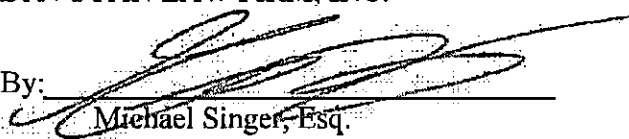
27 Plaintiff, on behalf of herself and all others similarly situated and aggrieved, prays for
28 relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action;
2. For appointment of Plaintiff as the representative of the Class;
3. For appointment of counsel for Plaintiff as Class Counsel;
4. For unpaid minimum wages pursuant to Labor Code section 1194;
5. For maintenance of this action as a Representative Action under the PAGA, and providing Plaintiff and her counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement ("DLSE");
6. For recovery of civil penalties as permitted by Labor Code sections 2699(a) and (f)(2), 1197.1, and 558(a)(1)-(2), in an amount according to proof, for failure to pay all minimum wages;
7. Liquidated damages pursuant to Labor Code section 1194.2;
8. Reasonable attorneys' fees and costs pursuant to Labor Code sections 1194 and 2698;
9. Reasonable attorneys' fees and costs of suit pursuant to Labor Code section 1021.5;
10. For such other relief the Court deems just and proper.

COHELAN KHOURY & SINGER
DAVTYAN LAW FIRM, INC.

Dated: January 6, 2023

By:


Michael Singer, Esq.

Marta Manus, Esq.

Attorneys for Plaintiff KARENA BUSH, on behalf of
herself and all others similarly situated and aggrieved

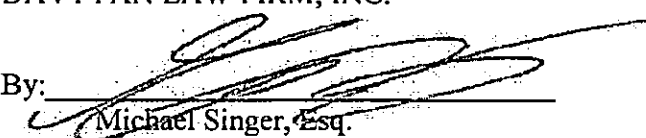
DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER
DAVTYAN LAW FIRM, INC.

Dated: January 6, 2023

By:


Michael Singer, Esq.

Marta Manus, Esq.

Attorneys for Plaintiff KARENA BUSH, on behalf of
herself and all others similarly situated and aggrieved

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