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Attorneys for Plaintiff,
TODD BLAGG, on behalf of himself, and all other aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MADERA

TODD BLAGG, in a representative capacity, Plaintiff, vs. FRESNO SURGERY CENTER, L.P., a California limited partnership, and DOES 1 through 10, inclusive, Defendants.	Case No. MCV088879 **REPRESENTATIVE ACTION COMPLAINT FOR:** **(1) Civil Penalties Pursuant To The Private Attorneys General Act Of 2004, California Labor Code § 2698, *Et Seq*.**

Plaintiff Todd Blagg brings this civil action and, on information and belief, alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Todd Blagg ("Plaintiff" or "Blagg") is an individual and a resident of California.

2. Fresno Surgery Center, L.P., doing business as Fresno Surgical Hospital, is a California limited partnership, and will be referred to in this pleading as Defendant, FSH, or the Company.

3. FSH operates surgical and administrative offices in the State of California.

4. Blagg is a former non-exempt employee of FSH. By way of this Complaint, Plaintiff seeks civil penalties in an amount that renders this matter an "unlimited" civil case within the meaning of California law. This action invokes all forms of applicable tolling including, without limitation, the tolling provided by Judicial Council Emergency Rule 9.

5. The true names and capacities of the Doe Defendants (Does 1 through 10, inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that they are in some way liable for the illegal conduct alleged herein. The Doe Defendants are believed to be affiliated entities of, or executives within, FSH, joint employers of Blagg and other aggrieved employees, or otherwise liable for the conduct complained of herein, whether because of alter-ego status, agency principles, aider and abettor (or co-conspirator) status, statutorily-imposed responsibility (Labor Code, § 558.1), or otherwise.

6. The Court has personal jurisdiction over FSH because the Company does business in this State on an ongoing basis and otherwise has minimum contacts with this State. The Court has personal jurisdiction over Plaintiff because he is a resident of California and has sufficient minimum contacts with this State. Venue is proper in Madera County inasmuch as the Company markets in and services patients from Madera County, one or more of the aggrieved employees covered by this action are and were residents of Madera County, the cause of action or some part of the cause arose in Madera County, and the alleged unlawful conduct and/or its effects occurred, at least in part, in Madera County.

GENERAL ALLEGATIONS

7. The Company subjected Blagg and other employees to wage-and-hour violations. These violations are discussed in the PAGA Notice attached hereto as **Exhibit A**, which is incorporated into this pleading, in full, by this reference.

8. Plaintiff is an aggrieved employee within the meaning of PAGA, and the other aggrieved employees on whose behalf civil penalties are sought are described in **Exhibit A**.

FIRST CAUSE OF ACTION

For Civil Penalties Pursuant To PAGA

(Against All Defendants)

9. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 8 inclusive as though fully set forth herein.

10. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of himself and all other aggrieved employees as identified in **Exhibit A** to this Complaint, brings this action as a representative action under the Private Attorneys General Act of 2004 ("PAGA") for civil penalties based on violations of the California Labor Code and the IWC Wage Order(s), including those set forth in **Exhibit A**.

11. Plaintiff has timely and adequately exhausted his administrative remedies. Plaintiff submitted his PAGA Notice on December 29, 2022, provided a copy of the same to FSH via certified mail, and waited the requisite 65-day time-period before filing this PAGA action in court.

12. During the applicable limitations period, FSH has violated California wage-and-hour law in numerous respects, including, without limitation:

(a) FSH has incorrectly calculated the regular rate of pay.

(b) Employees of FSH have worked off-the-clock.

(c) Employees of FSH have not received proper reporting time pay.

(d) FSH has failed to properly reimburse expenses incurred by employees.

(e) FSH has failed to provide employees with legally-compliant meal periods, and has failed to pay them the requisite meal period premiums.

(f) FSH has failed to provide employees with legally-compliant rest periods, and has failed to pay them the requisite rest period premiums.

(g) FSH has failed to provide accurate itemized wage statements.

(h) FSH has failed to pay employees all their wages due upon separation from employment.

(i) FSH has failed to keep accurate records as required by law.

13. Plaintiff has experienced one or more of the alleged violations.

14. Violations of the applicable IWC Wage Order(s) are actionable under PAGA through Labor Code sections 558 and 1198, among others.

15. Labor Code section 2699(f)(2) provides that the civil penalties recoverable under PAGA are "one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation," except where the Labor Code specifically provides for another penalty.

16. For all the above-specified Labor Code violations and those set forth in **Exhibit A**, Plaintiff seeks all available civil penalties that California law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including, without limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA.

17. In addition to civil penalties, Plaintiff seeks attorney's fees and costs, as authorized under PAGA.

PRAYER

WHEREFORE, Plaintiff requests judgment as follows:

On The First Cause Of Action

1. For all forms of relief and civil penalties recoverable under PAGA;

2. For attorney's fees and costs pursuant PAGA, or pursuant to any applicable statute (including, without limitation, Code of Civil Procedure, § 1021.5), or any applicable

legal doctrine, including the common fund doctrine, the substantial benefit theory, and/or the catalyst theory;

3. For interest on all amounts owing, commencing from the date such amounts were due; and

4. For all such other relief as the Court deems just and proper.

Dated: March 6, 2023

SCHEPPACH BAUER PC

By: ______________________

JOHN M. SCHEPPACH
Attorneys for Plaintiff
TODD BLAGG

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: March 6, 2023

SCHEPPACH BAUER PC

By: ______________________

JOHN M. SCHEPPACH
Attorneys for Plaintiff
TODD BLAGG

EXHIBIT A

SCHEPPACH | BAUER PC

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PAGA NOTICE

December 29, 2022

VIA CERTIFIED MAIL TO:	VIA ONLINE SUBMISSION TO:
Employer **Fresno Surgery Center, L.P.** c/o C T Corporation System Agent For Service Of Process 330 North Brand Blvd., Suite 700 Glendale, CA 91203	**The State Of California,** **Labor & Workforce Development Agency** Current Website Address: http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html

Re: *Todd Blagg, et al. v. Fresno Surgery Center, L.P., et al.*
PAGA Notice

Dear Employer And The LWDA:

Todd Blagg ("Blagg") on behalf of himself and all other aggrieved employees, and through his undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 ("PAGA"), of alleged violations of the California Labor Code committed by Fresno Surgery Center, L.P., dba Fresno Surgical Hospital ("FSH" or the "Company"). Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth in the paragraphs below. All citations herein are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice. This PAGA Notice invokes all available forms of tolling, including any tolling provided by Judicial Council Emergency Rule 9.

I. BACKGROUND

FSH operates a surgical hospital and administrative offices in the State of California. Blagg worked at an FSH facility in the Central Valley as a non-exempt hourly employee. During his employment at FSH, Blagg experienced a myriad of wage-and-hour violations.

PAGA Group

This PAGA Notice applies to Blagg and all current and former non-exempt FSH employees who, at any time during the applicable limitations period, worked at any FSH location in California (collectively referred to as the "aggrieved employees").

II. ALLEGED LABOR CODE VIOLATIONS

A. Incorrect Calculation Of The Regular Rate

Unless a regular rate exclusion applies, employers must properly factor all economic items into the regular rate of pay for purposes of calculating the overtime and double-time wages owed to employees. (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554, 568.) Economic items will cause an employee's regular rate of pay to be increased for purposes of calculating their overtime, double-time, meal period, rest period, and sick leave payouts.

Blagg and other aggrieved employees received economic items besides their normal hourly pay, including, without limitation, on call pay, shift guarantees, shift differentials, call back pay, holiday pay that functioned as an attendance bonus, bonuses, and other forms of compensation (collectively "Economic Items"). The Company was required to, but failed to, properly include these Economic Items in the regular rate. The Company either omitted the items from the regular rate, or otherwise erred in calculating the regular rate by utilizing an incorrect formula.

The Company's failure to properly include these Economic Items in the regular rate has caused the overtime and/or double-time wages of employees to be underpaid, in violation of Labor Code §§ 510, 1198 and 204. The underpayment of overtime/double-time wages has also violated § 3(A) of the applicable IWC Wage Order. The Company's failure to properly include these Economic Items in the regular rate has caused the meal and rest period premium payments of aggrieved employees to be underpaid, in violation of Labor Code § 226.7(c) and 204. And the failure to properly include these Economic Items in the regular rate has caused the sick leave payouts of employees to be underpaid, in violation of Labor Code §§ 204, 208, 233, 246.5(c)(1), and 248.6(b).

As a result of the inaccurate calculation of the regular rate, the Company failed to provide Blagg and other aggrieved employees with wage statements that accurately reflected their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

The Company was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid to, its employees; however, the Company failed to do so in violation of Labor Code § 1174(d). The inaccurate calculation of the regular rate as discussed above rendered these records inaccurate.

As a result of the Company's inaccurate calculation of the regular rate, the Company did not provide separated employees (Blagg included) with final pay that contained all wages due to them under California law, including all owed overtime, double-time, meal period premiums, rest period premiums, and sick leave. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

B. Off-The-Clock Work

During the limitations period, Blagg and other aggrieved employees worked off-the-clock.

Among other things, during on-call periods, Blagg and other aggrieved employees were controlled by FSH, were responsible for charging and handling an FSH on-call cellular phone, and had to engage in work-related communications on that cellular phone. This time was compensable and occurred off-the-clock. In addition, during on-call periods, Blagg and other aggrieved employees had to drive to FSH to handle emergency or urgent matters, and Blagg and other aggrieved employees were not compensated for the commute time to and from the hospital. These were not ordinary commutes under the law, they were controlled by FSH-imposed restrictions, and they were fully compensable. These commutes occurred off-the-clock.

In addition, and among other things, if an employee's meal period was interrupted by work or controlled by the Company, the employee was clocked out and did not receive pay for the compensable portion. Consequently, employees had compensable work during "meal periods" that was not accounted for in their time records or pay.

The Company's failure to compensate Blagg and other aggrieved employees for their off-the-clock work caused them to not be paid the applicable California minimum wage for compensable work (in violation of, and actionable under, Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1 & 1199), to not be paid their regular hourly rate for all hours worked (in violation of, and actionable under Labor Code §§ 204 & 218), and to not receive proper overtime and/or double-time compensation (in violation of, and actionable under, Labor Code §§ 204, 510 & 1198). The Company's failure to pay Blagg and the other aggrieved employees the overtime, double-time, and/or minimum wages they were due also violates regulatory law. (IWC Wage Orders, § 3 [overtime and double-time requirements], and § 4 [minimum wage requirements].)

As a result of off-the-clock work, the Company failed to provide Blagg and other aggrieved employees with wage statements that accurately reflected their total hours worked (violating Labor Code § 226(a)(2)), their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

The Company was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid to, its employees; however, the Company failed to do so in violation of Labor Code § 1174(d). The off-the-clock work rendered these records inaccurate.

As a result of off-the-clock work, the Company did not provide separated employees (Blagg included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

C. Reporting Time

The Company required employees to report to work, and failed to put them to work or furnish them with half of their usual or scheduled day's work. The Company also failed to pay the reporting time owed, at all or at the correct rate, when a reporting time pay scenario arose.

Among other things, on-call employees were called into FSH during on-call periods, including for emergency or urgent matters, and, after reporting, they were furnished with less than half their usual day's work. They were not paid proper reporting time pay for such call-in instances. On information and belief, aggrieved employees also reported into work electronically, or through cellular or electronic devices, were furnished with less than half their usual or scheduled day's work, and they were not paid proper reporting time pay for such instances.

The Company's reporting time pay infractions violate the reporting time pay provisions of § 5 of the IWC Wage Orders and are actionable under Labor Code §§ 204, 1194, and 558. Insofar as Labor Code section 226 applies to reporting time pay, because the Company omitted the reporting time pay owed on its wage statements, the Company failed to provide aggrieved employees with wage statements that accurately reflected their gross wages earned (violating Labor Code § 226(a)(1)) or their net wages earned (violating Labor Code § 226(a)(5)). As a result of the reporting time pay infractions and the Company's failure to pay the reporting time pay owed, the Company did not provide separated employees with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

The Company's furnishing of "on call" pay does not relieve it of its obligation to comply with California's reporting time pay requirements, because the "on call" pay provided was below the regular rate or minimum wage. (DLSE Enforcement Manual, § 45.1.2.1.)

D. Unreimbursed Expenses

Labor Code section 2802 requires employers to reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. Aggrieved employees incurred expenses for which they were not reimbursed, including (without limitation) those set forth below, in violation of Labor Code section 2802.

Among other things, the Company required Blagg and other aggrieved employees to utilize their personal cell-phones or other personal devices for work-related purposes, including, without limitation, to review and engage in work-related communications such (e.g., text messages). The

Company also required employees to engage in non-ordinary commutes (e.g., commuting time during on-call periods when employees were called to work) for which they did not receive mileage reimbursement. The Company also required on-call personnel to charge Company-provided equipment (e.g., a cellular phone) at their residences, without utility reimbursement. All of these expenses were not reimbursed.

The Company's failure to properly pay the expenses of Blagg and the other aggrieved employees violates and is actionable under Labor Code § 2802(a)-(c). (*Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137.)

E. <u>Meal Period Violations</u>

At all material times, the Company maintained policies and/or practices that prevented aggrieved employees from receiving legally-compliant first and second meal periods. The Company's policies and/or practices have caused employees to not be provided with the legally-compliant meal periods to which they were and are entitled.

Under California law, all non-exempt employees who work more than five (5) hours in a shift are entitled to take an uncontrolled, duty-free meal period of at least thirty (30) minutes. Meal periods must start after no more than five (5) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Under California law, all non-exempt employees who work more than ten (10) hours in a shift are entitled to take a second uncontrolled, duty-free meal period of at least thirty (30) minutes. Second meal periods must start after no more than ten (10) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Employers are forbidden from requiring employees to work during a meal period that is mandated by California statutory law or by an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a meal period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

At all material times, in its busy patient-oriented workplace, the Company did not establish or provide employees with a sufficient break system or break infrastructure, causing employees to routinely take delayed or shortened meal periods or forgo them altogether. The Company did not maintain a bell system or electronic notification system for breaks. During meal periods, the Company used a speaker that was audible in the breakroom to broadcast work-related communications to employees (e.g., to announce that a doctor had arrived early for a surgery), interrupting and/or controlling their meal periods.

Blagg and the aggrieved employees routinely worked the requisite hours to be entitled to a first meal period under California law. The Company was required to provide a first meal period to the aggrieved employees in accordance with law, and the Company failed to do so. Specifically, and without limitation, the Company failed to provide the aggrieved employees with first meal periods that were timely, duty and control-free, and/or a full 30 minutes. Likewise, and for the same reasons, the Company has also routinely failed to provide the aggrieved with legally-compliant second meal periods on shifts they worked more than ten (10) hours. The Company failed to provide the aggrieved employees with second meal periods that were timely, duty and control-free, and/or a full 30 minutes

No valid waiver exists to excuse the meal period violations. The Company did not properly pay aggrieved employees the required premium wages owed for the first and second meal period violations. The Company's non-provision of compliant meal periods, and the Company's non-payment of the required meal period premiums, violated and is actionable under Labor Code § 512(a), and Labor Code §§ 226.7(b) & (c).

As meal period premiums are wages subject to Labor Code section 226(a), the Company's failure to pay at all and list on its wage statements, and/or the Company's failure to properly pay and list on its wage statements, the meal period premiums to which Blagg and the aggrieved employees were entitled caused the Company's wage statements to inaccurately list the gross and net wages earned, in violation of Labor Code section 226(a)(1) and (a)(5). Moreover, when meal periods were interrupted and/or controlled, yet the aggrieved employees remained clocked out, their corresponding wage statements for the pay period did not accurately reflect their total hours worked or their gross or net wages earned, in violation of Labor Code section 226(a)(2), (a)(1) and (a)(5). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

As meal period premiums are wages subject to Labor Code sections 201-203, the Company also failed to include in the final pay of separated aggrieved employees (Blagg included) all the meal period premiums to which they were entitled. These deficiencies in final pay were willful within the meaning of Labor Code section 203, and are actionable under Labor Code sections 201, 202, 203, 208, and 256.

F. <u>Rest Period Violations</u>

At all material times, the Company maintained policies and/or practices that prevented aggrieved employees from receiving legally-compliant first and second rest periods. The Company's policies and/or practices have caused employees to not be provided with the legally-compliant rest periods to which they were and are entitled.

Under California law, all non-exempt employees must be authorized and permitted to take a "net" 10-minute rest break for every four (4) hours worked, or major fraction thereof. (IWC Wage Orders, § 12(A).) Non-exempt employees must be authorized and permitted to take one 10-minute rest break for shifts from three and one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.)

In terms of rest break timing, the employer must authorize and permit the taking of rest breaks "in the middle of each work period." (IWC Wage Orders, § 12(A); see also *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1040 [analyzing the rest break timing rule].) In terms of rest break duration, California law requires employers to provide employees with a "net" rest time of 10 minutes. (IWC Wage Orders, § 12.) An employee's 10 minutes of rest begins the moment the employee can reach an appropriate area of rest and be free from employer control. (*Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 112 [a rest period "begins when the employee reaches an area away from the work station that is appropriate for rest"]; *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal.5th 257, 273 ["California law requires employers to relieve their employee of all work-related duties and employer control during 10-minute rest periods"].)

Under California law, it is illegal for an employer to require an employee to work during a rest period that is mandated by California statutory law or an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a rest period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

Blagg and the other aggrieved employees worked the requisite hours to be entitled to first, second, and third rest periods under California law. The Company was required to authorize and permit Blagg and the other aggrieved employees to take rest periods in accordance with California law, and the Company failed to do so.

At all material times, in its busy patient-oriented workplace, the Company did not establish or provide employees with a sufficient break system or break infrastructure, causing employees to routinely take delayed or shortened rest periods or forgo them altogether. The Company did not maintain a bell system or electronic notification system for breaks. During rest periods, the Company used a speaker that was audible in the breakroom to broadcast work-related communications to employees (e.g., to announce that a doctor had arrived early for a surgery), interrupting and/or controlling their rest periods.

The Company also required employees to take premature “meal periods,” early in their shift, shortly after clocking in. This front-loading of first meal periods early in employee shifts had a negative impact on rest breaks and the timing of rest breaks. The front-loading of first meal periods forced employees to skip first rest breaks, or caused their first rest breaks to fall outside the “middle” of the work period. In addition, or alternatively, this front-loading of first meal periods prevented employees from receiving a second rest break, or caused their second rest break to fall right near the end of their shift, i.e., outside the “middle” of the work period.

On information and belief, the Company failed to provide third rest breaks at all, or third rest breaks that otherwise complied with the legal requirements of California law.

No valid waiver exists to excuse the rest period violations. The Company did not properly pay Blagg or the other aggrieved employees the required premium wages owed for the rest period violations. The Company did not have a system in place for flagging and paying for rest period violations. The Company's non-provision of compliant rest periods, and the Company's non-payment of rest period premiums, violated and is actionable under Labor Code sections 226.7(b) and (c). The Company's failure to provide legally-compliant rest periods also violated regulatory law. (IWC Wage Orders, § 12 [rest period requirements].)

As rest period premiums are wages subject to Labor Code section 226(a), the Company's failure to pay and list on its wage statements the rest period premiums to which Blagg and the aggrieved employees were entitled caused the Company's wage statements to inaccurately list the gross and net wages earned, in violation of Labor Code section 226(a)(1) and (a)(5). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

As rest period premiums are wages subject to Labor Code sections 201-203, the Company has also failed to include in the final pay of separated aggrieved employees (Blagg included) all the rest period premiums to which they were entitled. These deficiencies in final pay were willful within the meaning of Labor Code section 203, and are actionable under Labor Code sections 201, 202, 203, 208, and 256.

G. <u>Inaccurate Wage Statements</u>

Labor Code section 226, subdivision (a), requires that employers (such as FSH) furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing the "(1) gross wages earned, (2) total hours worked by the employee …, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, …, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, … , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee[.]"

As discussed throughout this PAGA Notice, the Company violated Labor Code section 226 in numerous respects. Although unnecessary for PAGA purposes, the above-mentioned violations were knowingly and intentionally committed, and resulted in injury to the employees.

In addition to the above-mentioned violations of Labor Code section 226(a), the Company's wage statements failed to accurately list the "applicable rate" for hours worked on shifts that entitled employees to elevated hourly pay (e.g., shifts on which employees received a "shift premium"). The actual hourly rate for such shifts was not itemized on the wage statements. For example, if an employee normally made $38.15 per hour, and worked a shift that entitled the employee to $39.65 per hour, the Company did not itemize the latter on its wage statements. Consequently, the Company violated Labor Code section 226(a)(9).

Furthermore, the Company's wage statements fail to accurately depict the total hours worked. The wage statements contain a dizzying array of pay items (e.g., regular pay, overtime listed twice, on call pay, holiday pay, etc.,) and there is no way to promptly and easily determine the total hours worked, or the total credited hours worked, from the face of the wage statement alone, in violation of Labor Code section 226(a)(2).

Moreover, the Company's wage statements list overtime twice (often at different rates), and the face of the wage statement suggests that such rates apply to the entire time period encompassed by the wage statement (i.e., from the "Period Beginning" date to the "Period Ending" date). That is inaccurate. The wage statements fail to specify and accurately reflect the inclusive dates of the workweek for which each line of overtime is being paid, in violation of Labor Code section 226(a)(6) and (9).

Although unnecessary for PAGA purposes, the above-mentioned violations were knowingly and intentionally committed, and resulted in injury to the employees.

III. CIVIL PENALTIES SOUGHT

For all the above-specified Labor Code violations, Blagg, on behalf of himself and all other aggrieved employees, seeks all available civil penalties against FSH that the law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including Labor Code §§ 210, 226.3, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA.

To the extent any other entity under the control of or acting in concert with FSH, or to the extent any executive of FSH, caused or contributed to the Labor Code violations, civil penalties are also sought as to such entities or responsible parties. Blagg, on behalf of himself and all other aggrieved employees, reserves the right to assert claims and theories for Labor Code violations and associated civil penalties that are uncovered in the discovery process but which are presently unknown.

Very truly yours,

John M. Scheppach
Scheppach Bauer PC