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on behalf of herself and current and former aggrieved employees

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

VIRGINIA MOLINA, on behalf of herself and
other aggrieved employees,

Plaintiff,

vs.

INDUSTRY CONVALESCENT HOSPITAL
dba EL ENCANTO HEALTHCARE; and DOES
1 to 100, inclusive,

Defendants.

Case No.: **23STCV03518**

PAGA ACTION

**PLAINTIFF VIRGINIA MOLINA'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff VIRGINIA MOLINA ("Plaintiff"), who alleges and complains
against Defendants INDUSTRY CONVALESCENT HOSPITAL dba EL ENCANTO
HEALTHCARE; and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

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

1 hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure
2 to authorize or permit all legally required and/or compliant meal periods or pay meal period
3 premium wages; failure to authorize or permit all legally required and/or compliant rest periods or
4 pay rest period premium wages; statutory penalties for failure to timely pay earned wages during
5 employment; statutory penalties for failure to provide accurate wage statements; statutory waiting
6 time penalties in the form of continuation wages for failure to timely pay employees all wages due
7 upon separation of employment. Plaintiff seeks on a representative basis, following notice to the
8 Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to
9 Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California,
10 and others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to Los Angeles County, at 555 El Encanto Road, City of
20 Industry, California 91745.

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

25 **III. PARTIES**

26 4. Plaintiff brings this action as a representative of the Labor and Workforce
27 Development Agency on behalf of herself and other current and former employees subject to
28 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
5 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
6 around August 9, 2004, until on or about June 8, 2022.

7 5. Plaintiff is informed and believes and thereon alleges that Defendant INDUSTRY
8 CONVALESCENT HOSPITAL dba EL ENCANTO HEALTHCARE is authorized to do business
9 within the State of California and is doing business in the State of California and/or that
10 Defendants DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of
11 Defendant INDUSTRY CONVALESCENT HOSPITAL dba EL ENCANTO HEALTHCARE in
12 the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
13 policies. Defendant INDUSTRY CONVALESCENT HOSPITAL dba EL ENCANTO
14 HEALTHCARE operates in Los Angeles County and employed Plaintiff and aggrieved employees
15 in Los Angeles County, including but not limited to, at 555 El Encanto Road, City of Industry,
16 California 91745.

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

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

28 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff

1 sues said defendants by said fictitious names, and will amend this complaint when the true names
2 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
3 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
4 named defendants is in some manner responsible for the events and allegations set forth in this
5 complaint.

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

9 **FIRST CAUSE OF ACTION**

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

11 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

12 **(Against all Defendants by Plaintiff)**

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

14 11. During the period beginning one (1) year preceding Plaintiff sending the initial
15 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
16 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197 and Sections 14 and 15 of the applicable Wage
17 Orders.

18 12. Specifically, Defendants have committed the following violations of California
19 Labor Code:

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

26 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
27 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
28 Wage Orders.

1 15. In this case, Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
3 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
4 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
5 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
6 not limited to:

7 (a) Rounding” down or “shaving” Plaintiff and other current and former aggrieved
8 California-based hourly non-exempt employees total daily hours at the time of their clock-in and
9 clock-out to the nearest quarter of an hour, to the benefit of Defendants;

10 (b) From March 2020 through at least June 2022, requiring Plaintiff and other current
11 and former aggrieved California-based hourly non-exempt employees to line up to wait to undergo
12 and undergo off-the-clock COVID-19 temperature checks prior to being permitted to clock in for
13 their start shift; and

14 (c) From March 2020 through at least June 2022, requiring Plaintiff and other current
15 and former aggrieved California-based hourly non-exempt employees to undergo nasal swab
16 COVID-19 tests prior to clocking in for the start of their shift.

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

23 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
24 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
25 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
26 which includes all time that an employee is under control of the employer and all time the
27 employee is suffered and permitted to work. This includes the time an employee spends, either
28 directly or indirectly, performing services that inure to the benefit of the employer.’

1 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
2 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
3 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

4 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
5 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
6 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
7 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
8 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
9 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
10 seventh day of a workweek shall be compensated at the rate of no less than twice the
11 regular rate of pay of an employee.

12 Labor Code section 510.

13 19. In this case, Defendants failed to pay Plaintiff and other current and former
14 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
15 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

16 (a) Rounding" down or "shaving" Plaintiff and other current and former aggrieved
17 California-based hourly non-exempt employees total daily hours at the time of their clock-in and
18 clock-out to the nearest quarter of an hour, to the benefit of Defendants;

19 (b) From March 2020 through at least June 2022, requiring Plaintiff and other current
20 and former aggrieved California-based hourly non-exempt employees to line up to wait to undergo
21 and undergo off-the-clock COVID-19 temperature checks prior to being permitted to clock in for
22 their start shift; and

23 (c) From March 2020 through at least June 2022, requiring Plaintiff and other current
24 and former aggrieved California-based hourly non-exempt employees to undergo nasal swab
25 COVID-19 tests prior to clocking in for the start of their shift.

26 20. The foregoing policies, practices, and/or procedures resulted in time during each
27 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
28 employees were under the control of Defendants but were not compensated. To the extent that the
foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed

1 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
2 sections 510 and 1194 and the applicable Wage Order.

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

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

18 23. If an employer fails to provide an employee a meal period in accordance with the
19 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
20 for each workday that a legally required and compliant meal period was not provided. Labor Code
21 section 226.7; Wage Order 5 at §11.

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

26 (a) Rounding" down or "shaving" Plaintiff and other current and former aggrieved
27 California-based hourly non-exempt employees total daily hours at the time of their clock-in and
28 clock-out for meal breaks to the nearest quarter of an hour, to the benefit of Defendants;

1 (b) Failing to provide Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees a second uninterrupted duty-free meal period of no less than thirty
3 (30) minutes for shifts exceeding ten (10) hour

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

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

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

18 28. California law requires every employer to authorize and permit an employee a rest
19 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
20 Code section 226.7; Wage Order 5 at §12. Under California law, "[e]mployees are entitled to 10
21 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
22 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
23 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
24 section 226.7; Wage Order 5 at §12. Rest periods, insofar as practicable, shall be in the middle of
25 each work period. Wage Order 5 at §12. Additionally, the rest period requirement "obligates
26 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
27 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
28 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

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

5 30. In this case, Defendants failed to authorize or permit all legally required and
6 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
8 limited to:

9 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
10 hourly non-exempt employees a third uninterrupted duty-free rest period of no less than ten (10)
11 minutes when they worked shifts exceeding ten (10) hours.

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

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

21 33. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
24 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
25 16th and the 26th day of that month and wages earned between the 16th and the last day,
26 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
27 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
28 paid within seven (7) calendar days following the close of the payroll period in which wages were

1 earned. Labor Code section 204(d).

2 34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
3 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' earned wages (including minimum wages, overtime wages, meal period
5 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
6 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
7 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
8 their earned wages within the applicable time frames outlined in Labor Code section 204.

9 35. **Failure to provide complete and accurate wage statements:** Labor Code section
10 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
11 employee his or her wages, the employer must "furnish each of his or her employees ... an
12 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
13 employee, except for any employee whose compensation is solely based on a salary and who is
14 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
15 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
16 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
17 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
18 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
19 name of the employee and his or her social security number, (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee."

22 36. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
23 and other current and former aggrieved California-based hourly non-exempt employees all wages
24 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
25 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
26 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
27 section 226.

28 37. **Failure to pay employees all wages due at time of termination/resignation:** An

1 employer is required to pay all unpaid wages timely after an employee's employment ends. The
2 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
3 hours of resignation (Labor Code section 202).

4 38. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
5 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
6 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
7 and/or rest period premium wages), Defendants failed to pay those employees timely after each
8 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

9 39. Defendants' violations of Wage Order 5 constituted violations of Labor Code
10 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

15 41. Plaintiff has complied with the procedures for bringing suit specified in Labor
16 Code section 2699.3. On December 13, 2022, Plaintiff filed a PAGA Claim Notice with the
17 LWDA and provided notice to Defendants by certified mail which provided notice of the specific
18 provisions of the Labor Code alleged to have been violated, including the facts and theories to
19 support the violations alleged.

20 42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
21 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
22 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
23 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
24 to investigate Plaintiff's claims.

25 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
26 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
27 512, 1194, and 1197 beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
28 Notice to the LWDA to the present, in the following amounts:

1 under California Labor Code section 2699(g); and

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

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5 Dated: February 17, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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By:



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VIRGINA MOLINA,

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on behalf of herself and current and former
aggrieved employees

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