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SHASTA COUNTY SUPERIOR COURT
BY: M. PARTRIDGE, DEPUTY CLERK

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Attorneys for Plaintiff, Michelle Gaffney

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SHASTA**

MICHELLE GAFFNEY, on behalf of herself
and all others similarly situated and the general
public,

Plaintiffs,

v.

PRIME HEALTHCARE ASC-REDDING, LLC,
a Delaware limited liability company; PRIME
HEALTHCARE SERVICES – SHASTA, LLC
dba SHASTA REGIONAL MEDICAL
CENTER, a Delaware limited liability company;
and DOES 1 to 100,

Defendants

) Case No.: 23CV-0202050
) Hon. Stephen H. Baker
) Dept. 3

) CLASS ACTION

) **FIRST AMENDED COMPLAINT FOR:**

-) 1. Violation of **B&PC** §17200, et seq.;
) 2. Failure to Provide Meal Breaks
) Labor Code §§226.7 & 512
) 3. Failure to Provide Rest Breaks
) 4. Inaccurate Wage Statements
) (LC §226);
) 5. Penalties Under PAGA Labor Code
) §2698, et seq.

) **DEMAND FOR JURY TRIAL**

1 Plaintiff, Michelle Gaffney on behalf of herself and all other persons similarly situated,
2 hereby complain against Defendant Prime Healthcare ASC-Redding, LLC, a Delaware limited
3 liability company; Prime Healthcare Services – Shasta, LLC dba Shasta Regional Medical
4 Center, a limited liability company (hereinafter referred to as “Defendants” or “Shasta”), and
5 DOES 1 to 100, as follows:

6 **GENERAL ALLEGATIONS**

7 **JURISDICTION**

8 1. This is an action seeking recovery of unpaid wages under California Labor Code
9 §§ 203, 226, 226.7, 512, and Wage Order 5-01. The Plaintiff for herself and on behalf of and all
10 others similarly situated, bring an action for monetary damages for failure to pay wages as well
11 as for injunctive relief, declaratory relief and restitution for Defendant’s violations of Business
12 and Professions Code (B&PC) §17200, et seq., including full restitution of all compensation
13 retained by Defendant, as a result of its unlawful, fraudulent and unfair business practices.
14 Plaintiff seeks all available relief, including full damages, full restitution and/or disgorgement of
15 all revenues, earnings, profits, compensation and benefits retained by Defendant as a result of its
16 unlawful, unfair business practices. Further, Plaintiff seeks injunctive relief under B&PC
17 §17203.

18 **VENUE**

19 2. Venue as to the Defendant is proper in Shasta pursuant to Code of Civil Procedure
20 (CCP) §§ 395(a) and 395.5, as the acts complained of herein occurred in the County of Shasta.
21 Defendant either owns or maintain offices, transacts business, has an agent or agents within the
22 County of Shasta, or otherwise is found within the County of Shasta.

23 **PARTIES**

24 3. Michelle Gaffney is an individual over the age of eighteen (18). At all relevant
25 times herein, Plaintiff Michelle Gaffney was and currently is a resident of the County of Shasta,
26 State of California.

27 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
28 herein, Defendant, Prime Healthcare ASC-Redding, LLC, is and was a Delaware limited liability

company.

5. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, Defendant, Prime Healthcare Services – Shasta, LLC dba Shasta Regional Medical Center, is a Delaware limited liability company.

6. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, Defendants listed herein are professional entities licensed to do business in California.

7. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant was licensed to do business in the State of California, County of Shasta, with its principal place of business in Redding, California.

8. During the liability period, Defendant employed Plaintiff and similarly situated nonexempt hourly employees and due to Defendant's uniform payroll practices, deprived Plaintiff and the Class, of proper premium pay for missed meals and rest breaks, failed to schedule Plaintiff and Plaintiff Class in such a manner that allowed Plaintiff and Plaintiff Class to receive and/or take her meal and/or rest breaks, Plaintiff and Plaintiff Class were not provided and/or denied work free meal and rest breaks. Defendant also failed to pay Plaintiff and Plaintiff Class proper premium missed meal and rest period premium, as Defendant failed to include certain remuneration that must be included in employees' regular rate, including without limitation, nondiscretionary bonuses, charge nurse premiums, in-house registry payments, shift differentials, on call pay, and call back pay into the employees' regular rate and failed to pay due and owed wages upon ending of employment for employees within California. On information and belief, and based thereon alleges that Defendant is conducting business in good standing in California.

9. Plaintiff is informed and believes and thereon alleges that Defendant and DOES 1 to 100, control and operate businesses and establishments in locations within the State of California, including, but not limited to, the County of Shasta, for the purposes of providing hospital and healthcare services. Thus, each named Defendant and DOES 1 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code.

////

1 10. Plaintiff does not know the true names or capacities, whether individual, partner,
2 or corporate, of Defendants sued herein as DOES 1 to 100, inclusive, and for that reason use
3 fictitious names, and Plaintiff will amend this Complaint when such true names and capacities
4 are discovered pursuant to Code of Civil Procedure section 474. Plaintiff is informed and
5 believes and thereon alleges that each Defendant and each fictitious Defendant, whether
6 individual, partners, or corporate, was responsible in some manner for the circumstances alleged
7 herein. Plaintiff intends to amend this complaint to add PAGA allegations once the
8 administrative notice period expires.

9 11. At all times herein mentioned, each of said Defendants participated in the doing
10 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
11 Defendants, were the agents, servants, and employees of each and every one of the other
12 Defendants, and at all times herein mentioned were acting within the course and scope of said
13 agency and employment.

14 12. At all times mentioned herein, Defendants were members of and engaged in a
15 joint venture, partnership, and common enterprise, and acting within the course and scope of and
16 in pursuance of said joint venture, partnership, and common enterprise.

17 13. At all times herein mentioned, the acts and omissions of the Defendants,
18 concurred and contributed to the acts and omissions of each and every one of the other
19 Defendants in proximately causing the damages alleged herein.

20 15. At all times herein mentioned, Defendants approved of, condoned, and/or
21 otherwise ratified each and every one of the acts or omissions complained of herein.

22 **UNFAIR COMPETITION ALLEGATIONS**

23 14. Plaintiff on behalf of herself and all others similarly situated, filed this cause of
24 action acting as a private attorney general on behalf of the general public to challenge and
25 remedy the business practices of Defendants alleged herein.

26 15. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits
27 unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
28 practice. Defendant instituted and implemented unlawful wage-and-hour policies, which

1 constitute unfair, unlawful, or fraudulent business acts or practices. Any person that has suffered
2 injury may initiate an action to enforce the Unfair Competition Law. The court is authorized to
3 order injunctive relief, declaratory relief, and restitution to affected members of the general
4 public as remedies for any violations of B&PC §17200 et seq.

5 16. Plaintiff entitled to an award of attorneys' fees and costs in prosecuting this action
6 as a private attorney general against Defendant under CCP §1021.5 based on the following:

7 a. A successful outcome in this action will result in the enforcement of
8 important rights affecting the public interest by maintaining the integrity of entities that employ
9 employees;

10 b. This action will result in a significant benefit to the general public by
11 ceasing unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains
12 obtained by Defendant through their failure to properly pay their employees;

13 c. Unless this action is prosecuted, members of the general public will not
14 recover monies wrongfully taken from them, and many employees and consumers would not be
15 aware that they were victimized by Defendant's wrongful acts and practices; and Unless
16 attorneys' fees and costs are awarded against Defendant, the general public will not be made
17 whole; this is known as the catalyst theory.

18 **PLAINTIFF CLASSES**

19 17. The class representative Plaintiff who worked in the position of non-exempt
20 hourly employee, while employed by Defendant within the State of California is Michelle
21 Gaffney.

22 **CLASS ACTION ALLEGATIONS**

23 18. Plaintiff brings this action on behalf of herself and all others similarly situated as
24 a class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are
25 composed of and defined as follows:

26 **Class 1:**

27 All California based non-exempt hourly employees of Defendant who worked at Shasta
28 Regional Medical Center at least one (1) day of more than eight (8) hours in a day or more than

forty (40) hours in a week from four (4) years preceding the filing of this complaint, through the date of class certification order. ("Regular Rate Class");

Class 2:

All non-exempt hourly patient care employees of Defendant who worked at least one (1) day at the Shasta Regional Medical Center facility from four (4) years preceding the filing of this Complaint through the date of class certification order who were not provided legally-compliant

Subclass 1:

All non-exempt hourly patient care employees of Defendant who worked at least one (1) day at Shasta Regional Medical Center from four (4) years preceding the filing of this Complaint through the date of class certification order who were underpaid meal period penalties. ("Meal Break Class");

Class 3:

All California based non-exempt hourly employees of Defendant who worked at least one (1) day at Shasta Regional Medical Center from one (1) year preceding the filing of this complaint, through the date of class certification order who were provided a paystub (a.k.a. wage statement) from Defendant ("Pay Stub Class").

Class 4:

All non-exempt hourly patient care employees of Defendant who worked at least one (1) day at Shasta Regional Medical Center from four (4) years preceding the filing of this Complaint through the date of class certification order, who were not provided with 10-minute rest periods for every 4 hours of work or major fraction thereof. ("Rest Break Class")

Subclass 2:

All non-exempt hourly patient care employees of Defendant who worked at least one (1) day at Shasta Regional Medical Center from four (4) years preceding the filing of this Complaint through the date of class certification order who were underpaid rest period penalties. ("Rest Break Class");

The members of the classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this

time; however, it is estimated that the classes number greater than 500 individuals. The identity of such membership is readily ascertainable via inspection of Defendant's employment records.

19. There are common questions of law and fact as to Plaintiff and all others similarly situated which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendant engaged in unfair business practices;
- ii. Whether Defendant, were participants in the unlawful conduct;
- iii. Whether Defendant's conduct was willful or reckless;
- iv. The effect upon and the extent of injuries suffered by Plaintiff and all others similarly situated and the appropriate amount of compensation;
- v. The appropriate amount of monetary penalties allowed by Labor Code §§201, et. seq., 226, and 226.7;
- vi. Whether Defendant violated Labor Code §226 and relevant IWC Wage Orders;
- vii. Whether Defendant knowingly and intentionally failed to maintain records for Plaintiff and members of the Plaintiff class as required by Labor Code § 1174 and §7 of the IWC Order 5-2001;
- viii. Whether Defendant willfully violated the Labor Code;
- ix. Whether Defendant fails to provide and permit regularly compliant meal periods;
- x. Whether Defendant fails to authorize and permit legally compliant rest period breaks; and
- xi. Whether Defendant is subject to civil penalties pursuant to Labor Code §§2699, et seq.

20. Plaintiff's claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiff, as a representative party, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced in handling matters of this type. Plaintiff has no claims or interests that

1 are antagonistic to any class member.

2 21. The nature of this action and the nature of laws available to the members of the
3 classes and subclasses identified herein make use of the class action format a particularly
4 efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein.
5 Further, this claim involves one large employer, Defendant, and a large number of individual
6 employees (Plaintiff and all others similarly situated) with many relatively small claims with
7 common issues of law and fact. If each employee were required to file an individual lawsuit, the
8 corporate Defendant would necessarily gain an unconscionable advantage since it would be able
9 to exploit and overwhelm the limited resources of each individual Plaintiff with their vastly
10 superior financial and legal resources. Requiring each class member to pursue an individual
11 remedy would also discourage the assertion of lawful claims by employees who would be
12 disinclined to pursue an action against their present and/or former employer for an appreciable
13 and justifiable fear of retaliation and permanent damage to their careers at present and/or
14 subsequent employment. Proof of a common business practice or factual pattern, of which the
15 named Plaintiff experienced, is representative of the class mentioned herein and will establish the
16 right of each of the members of the named class to recovery on the causes of action.

17 22. The prosecution of separate actions by the individual class members, would create
18 a substantial risk of inconsistent or varying verdicts or adjudications with respect to the
19 individual class members against Defendant herein; and which would establish potentially
20 incompatible standards of conduct for Defendant; and/or (b) legal determinations with respect to
21 individual class members which would, as a practical matter, be dispositive of the interests of the
22 absent class members or which would substantially impair or impede the ability of the class
23 members to protect their interests. Further, the claims of the individual members of the class are
24 not sufficiently large to warrant vigorous individual prosecution considering all of the
25 concomitant costs and expenses attending thereto.

26 23. Plaintiff and all others similarly situated are entitled to the wages and other
27 monies unlawfully withheld.
28

1 **FIRST CAUSE OF ACTION**

2 **(Violation of B&PC §17200, et seq.)**

3 24. Plaintiff re-alleges and incorporates by reference herein the allegations of all
4 preceding paragraphs as though fully set forth herein.

5 25. Beginning on an exact date unknown to Plaintiff, Defendant engaged in a pattern
6 and practice of acts of unfair competition in violation of B&PC §17200.

7 **FAILURE TO PAY PROPER WAGES**

8 26. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
9 ongoing unfair business practice, Defendant's employees were and are employed and scheduled
10 as a matter of established company policy to work, and in fact, worked twelve (12) hour shifts.
11 The hours worked by Defendant's employees is in excess of eight (8) hours per day, and in
12 excess of forty (40) hours per week without being provided all their meal/rest periods or missed
13 meal and rest period payments at the correct regular rate. The Defendant is in violation of Labor
14 Code §§ 226.7 and 512, and Industrial Welfare Commission Orders 5-2001, et seq.

15 27. Defendant, consistently administered a corporate policy regarding, staffing levels,
16 duties and responsibilities of Defendant's employees, which required that the entirety of the
17 employees work without meal and rest periods or without proper premium pay. Further, the
18 Plaintiff and the Plaintiff Class are entitled to restitution of these wages obtained by Defendant.

19 28. This corporate policy and pattern of conduct is accomplished with the advance
20 knowledge and designed intent not to pay the employees at a premium rate for all missed meal
21 and rest period premiums paid. Further, the Plaintiff and the members of the class are entitled to
22 restitution of these wages obtained by Defendant.

23 29. The Plaintiff and the members of the classes are entitled to restitution of all
24 unpaid wages obtained by Defendant. Any business act or practice that violates the Labor Code
25 through a failure to pay wages is by definition an unfair business practice under §17200. Section
26 17200 provides an action to recover wages as restitution. Defendant's failure to properly pay all
27 wages, including missed meal and rest period premiums at the correct regular rate.; Unpaid
28 premium pay at the correct regular rate is recoverable as restitution under Section 17203

1 30. Defendant's hourly nonexempt patient care employees, including but not limited
2 to, nurses, LVNs, CNAs, Respiratory Therapists, and Technicians, as well as other hourly patient
3 care and non-patient care employees were and are employed and schedule as a matter of
4 established company policy to work, and in fact, worked over eight (8) hours and twelve (12)
5 hour shifts. The hours worked by Defendant's hourly employees is in excess of eight (8) hours
6 per day, and in excess of forty (40) hours per pay period without receiving the required meal and
7 rest periods and/or premium pay for such violation of Labor Code §§ 203, 512, and the relevant
8 Industrial Welfare Commission orders.

9 31. Defendant, consistently administered a corporate policy regarding both staffing
10 levels, duties and responsibilities of Defendant's employees, including nurses which required
11 that the entirety of the employees to work without meals and rest periods and/or premium pay at
12 (1) regular rate of pay. Accordingly, said employees are entitled to one (1) regular rate of pay
13 and missed break compensation under California law. The general public is entitled to the
14 disgorged profits obtained by Defendant. Furthermore, the Defendant has failed to properly
15 include items of remuneration when determining the employees' regular rate, this includes but is
16 not limited to the failure to include the shift differentials and non-discretionary bonuses paid to
17 all eligible employees.

18 **VIOLATION OF MEAL PERIOD PROVISIONS**

19 32. Defendant's improper meal policies are in violation of California law including,
20 but not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001. The Plaintiff and the
21 members of the class are entitled to a half hour meal period for every five (5) hours of their shift
22 worked. Defendant violated the meal break provisions and did not provide Plaintiff and the class
23 with duty free meal periods for every five (5) hours of their shift worked. Plaintiff and the class
24 were entitled to 1 hour of pay for each meal break violation at their regular rate of pay.

25 33. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
26 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code
27 during the relevant class period and/or failed to obtain legal waivers waiving the first or second
28 meal period in a shift in excess of 10 hours.

1 **FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS**

2 34. Plaintiff and other members of the Rest Period Class are entitled to the benefits of
3 Labor Code § 226.7 and Order 5-2001 of the Industrial Welfare Commission. Pursuant to Labor
4 Code § 226.7 and Wage Order 5-2001, Plaintiff and the other members of the Rest Period Class
5 were entitled to separate rest periods of at least 10 minutes for each four-hour period of work or
6 major fraction thereof, and one hour of additional pay for every shift a rest period was not
7 provided in conformance with this obligation.

8 35. Plaintiff is informed and believes, and thereon alleges that Defendant consistently
9 compelled Plaintiff and other members of the Rest Period Class employed for shifts of more than
10 four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) or three (3)
11 rest breaks required depending on shift length. Further, Plaintiff alleges Defendant failed to
12 provide duty-free rest periods and off-site rest periods to Plaintiff and the class.

13 36. Plaintiff, and the class are entitled to and do seek such relief as may be necessary
14 to restore to them the money and property which Defendant has acquired, or of which Plaintiff
15 and class members have been deprived by means of the herein described unfair, unlawful, and/or
16 fraudulent business practices.

17 37. Plaintiff, and the class are further entitled to and do seek a declaration that the
18 above-described business practices are unfair, unlawful, and/or fraudulent, and injunctive relief
19 restraining Defendant from engaging in any of the herein described unfair, unlawful, and/or
20 fraudulent business practices at all times in the future.

21 38. Plaintiff seeks restitution and injunctive relief for all the aforementioned
22 violations.

23 39. Plaintiff and the putative class seek full restitution of said monies, as necessary
24 and according to proof, to restore any and all monies withheld and/or acquired by Defendant by
25 means of the unfair business practices complained of herein. Plaintiff seeks, on behalf of all
26 current and former employees of Defendant, restitution of said monies. The restitution includes
27 all wages withheld by Defendant as a result of the unfair business practices, including interest
28 thereon. Absent a statutory provision specifically governing the type of claim at issue, the

1 prejudgment interest rate is 10 percent.

2 40. Plaintiff is informed and believes and thereon alleges, that at all times herein
3 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices
4 prohibited by California B&PC §17200, thereby depriving their employees and the putative class
5 the minimum working condition, standards and conditions due to them under the California labor
6 laws and Industrial Welfare Commission wage orders as specifically described herein. Plaintiff
7 seeks an injunction preventing Defendant from continuing its unfair business practice of
8 improperly depriving their employees' missed meal and rest period premium pay. Plaintiff
9 further seeks an order requiring Defendant to identify by full name, telephone number, and last
10 known address employees who worked or still work for Defendant from four (4) years preceding
11 the filing of the original Complaint through the date of judgment; Plaintiff further seeks an order
12 requiring Defendant to timely pay restitution to all current and former employees, including back
13 wages, and interest. The acts complained of herein occurred, at least in part, within the last four
14 (4) years preceding the filing of the original Complaint.

15 41. By and through its unfair, unlawful, and/or fraudulent business practices and acts
16 described herein, Defendant has obtained valuable services from Plaintiff and all persons
17 similarly situated, and has deprived Plaintiff and all persons similarly situated of valuable rights
18 and benefits guaranteed by law, all to their detriment.

19 42. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
20 to and do seek such relief as may be necessary to restore to them the money and property which
21 Defendant has acquired, or of which Plaintiff and class members have been deprived by means of
22 the herein described unfair, unlawful, and/or fraudulent business practices.

23 43. Plaintiff, and all persons similarly situated, and all persons in interest, are further
24 entitled to and do seek a declaration that the above-described business practices are unfair,
25 unlawful, and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of
26 the herein described unfair, unlawful, and/or fraudulent business practices at all times in the
27 future.
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1 44. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
2 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL BREAKS**

5 45. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
6 paragraphs above.

7 46. Labor Code §226.7 requires an employer to pay an additional hour of
8 compensation for each meal period the employer fails to provide. Plaintiff alleges that Shasta
9 failed to provide legally compliant meals in addition to impeding, discouraging and/or
10 dissuading employees from taking legally compliant meal periods. Employees are entitled to a
11 meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff and the class
12 consistently worked over five (5) hour shifts without meal periods due to Defendant's policy of
13 discouraging, dissuading and/or impeding Plaintiff and the class from taking meal periods.
14 Plaintiff and the class are entitled to a meal period of not less than thirty (30) minutes prior to
15 exceeding five (5) hours of employment, and a second meal period for hours worked over ten
16 (10) in a day. Further, Plaintiff and the class allege that Defendant fails to provide meal periods
17 for shift worked in excess of 12 hours.

18 47. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
19 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code
20 during the relevant class period and/or failed to obtain legal waivers waiving the right to a meal
21 period. Further, Plaintiff alleges that Defendant failed to pay missed meal premiums at the
22 proper regular rate and thus, underpaid premiums it did pay.

23 48. Further, even if meal premiums were paid, they were not paid at the correct
24 regular rate pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

25 49. Pursuant to Labor Code §226.7, Plaintiff and the Plaintiff Class are entitled to
26 damages in an amount equal to one (1) hour of wages at the hourly non-exempt regular rate of
27 pay per meal break violation, in a sum to be proven at trial.

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50. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal to one (1) hour of wages at the employees' regular rate per missed meal break, in a sum to be proven at trial.

THIRD CAUSE OF ACTION

FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7

(Against All Defendants)

51. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the aforementioned allegations.

52. Plaintiff alleges that Defendant violated Labor Code §§226.7 & the applicable Wage Order. Section 226.7 of the Labor Code requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Hourly non-exempt employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof. The Defendant's policy discourages, dissuades, and prevents all hourly non-exempt employees from taking a duty-free rest period break for any work period that is greater than two (2) hours up to four (4) hours. Plaintiff and the Plaintiff Class consistently worked over four (4) hours per shift with no duty-free, off-premises rest breaks, due to Defendant's policy of discouraging, dissuading and/or preventing hourly employees from taking compliant rest periods.

53. Further, even if rest premiums were paid, they were not paid at the correct regular rate pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

54. Pursuant to Labor Code §226.7, Plaintiff and the Plaintiff Class are entitled to damages in an amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest break violation, in a sum to be proven at trial.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **PURSUANT TO LABOR CODE §226**

4 **(Against All Defendants)**

5 55. Plaintiff re-alleges and incorporates by reference herein the allegations of all
6 preceding paragraphs as though fully set forth herein.

7 56. The applicable Wage Order provides:

8 Every employer shall semimonthly or at the time of each payment of wages
9 furnish each employee, either as a detachable part of the check, draft, or voucher
10 paying the employee's wages, or separately, an itemized statement in writing
11 showing: (1) all deductions; (2) the inclusive dates of the period for which the
12 employee is paid; (3) the name of the employee or the employee's social security
13 number; and (4) the name of the employer, provided all deductions made on
14 written orders of the employee may be aggregated and shown as one item.
15 Subsection (e) provides: "Any employee suffering injury as a result of a
16 knowing and intentional failure by an employer to comply with subdivision (a)
17 shall be entitled to recover the greater of all actual damages or fifty dollars (\$50)
18 for the initial pay period in which a violation occurs and one hundred dollars
19 (\$100) per employee for each violation in a subsequent pay period, not exceeding
20 an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
21 award of costs and reasonable attorney's fees."

22 57. During the Class Period, Defendant knowingly and intentionally failed to provide
23 Plaintiff and the class members, including Plaintiff, with timely and accurate wage statements
24 showing gross wages earned, all deductions made, net wages earned, and all applicable hourly
25 rates in effect during each pay period and the corresponding number of hours worked at each
26 hourly rate by that Class Member.

27 58. Defendant thus required the Class Members, including Plaintiff, to work under
28 conditions prohibited by order of the Industrial Welfare Commission, in violation of those
orders.

59. The Class Members, including Plaintiff, suffered injury as a result of Defendant's
knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage
statements required by law.

1 60. Based on Defendant's conduct as alleged herein, Defendant is liable for actual
2 damages, statutory damages and/or statutory penalties pursuant to California Labor Code §226,
3 including attorney's fees and costs.

4 **FIFTH CAUSE OF ACTION**

5 **CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699**

6 61. Plaintiff re-alleges and incorporates each and every one of the allegations of all
7 preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth
8 herein.

9 62. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of
10 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce
11 Development Agency (LWDA), or any of its departments, divisions, commissions, boards,
12 agencies or employees for a violation of the Labor Code, may be recovered through a civil
13 action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of
14 all other current or former employees.

15 63. Whenever the LWDA, or any of its departments, divisions, commissions, boards
16 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is
17 authorized to exercise the same discretion, subject to the same limitations and conditions to
18 assess a civil penalty.

19 64. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved
20 employees" as defined by Labor Code §2699, in that they are all current or former employees of
21 Defendants, and one or more of the alleged violations was committed against them.

22 65. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on or
23 about December 12, 2022, via mandatory online filing through the State of California LWDA/
24 Department of Industrial Relations website with a copy to the employer via certified mail, of the
25 specific provisions of this code alleged to have been violated, including listing some facts and
26 some theories to support the alleged violations as required by Labor Code §2699.3; A true and
27 correct copy of the letter is attached hereto as **Exhibit 1**. Plaintiff alleges that she has exhausted
28 all administrative remedies and filed the herein complaint 65 days after mailing said notice. At

1 the date of filing this Complaint, the LWDA has not responded with any intention to investigate.
2 As such, Plaintiff has exhausted her administrative requirements pursuant to LC §2699.3(a)(1)
3 and (2) (A-C).

4 66. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
5 behalf of themselves and other current or former employees, to bring a civil action to recover
6 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

7 67. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved
8 employees are entitled to recover civil penalties for each of the Defendant's violations of
9 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198
10 during the applicable limitations period in the following amounts:

11 a. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred
13 dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of
14 the amount unlawfully withheld from each aggrieved employee for each
15 subsequent, willful or intentional violation (penalty amounts established by
16 California Labor Code § 210).

17 b. For violations of California Labor Code § 226(a), two hundred fifty
18 dollars (\$250.00) per employee for initial violation and one thousand dollars
19 (\$1,000.00) per employee for each subsequent violation (penalty amounts
20 established by California Labor Code § 226.3).

21 c. For violations of California Labor Code § 512, fifty dollars (\$50.00) for
22 each aggrieved employee for each initial violation for pay period for which the
23 employee was underpaid and one hundred dollars (\$100.00) for each underpaid
24 employee for each pay period for which the employee was underpaid (penalty
25 amounts established by California Labor Code § 558).

26 d. For violations of California Labor Code § 1197, one hundred dollars
27 (\$100.00) for each aggrieved employee for each initial and intentional violation
28 per pay period (regardless of whether the initial violations were intentionally

committed) and two hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to California Labor Code § 1194.2, and applicable penalties imposed pursuant to California Labor Code § 203.

e. For violations of California Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code of Regulations in the amount of \$50 for each aggrieved employee per pay period for the initial violation, and \$100 for each aggrieved employee per pay period for each subsequent violation;

g. Penalties under Labor Code §210, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

h. Penalties under Labor Code §256, in addition to and entirely independent and apart from other penalty provided in the Labor Code, including Labor Code §2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;

1 i. Penalties under Labor Code §558, in addition to and entirely independent
2 and apart from other penalty provided in the Labor Code, in the amount of \$50 for
3 each underpaid aggrieved employee for each pay period the aggrieved employee
4 was underpaid, and \$100 for each subsequent violation for each underpaid
5 employee for each pay period for which the employee was underpaid pursuant to
6 Labor Code §558 provided to the affected employees;

7 j. Penalties under Labor Code §226.3, in addition to and entirely
8 independent and apart from other penalty provided in the Labor Code, in the
9 amount of \$250 for each aggrieved employee per pay period for each violation,
10 and \$1,000 for each aggrieved employee per pay period for each subsequent
11 violation;

12 k. Any and all additional penalties and sums as provided by the Cal. Labor
13 Code and/or other statutes.
14

15 68. Pursuant to California Labor Code §2699(g), Plaintiff and the aggrieved
16 employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
17 connection with their claims for civil penalties.
18

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiff prays:

21 1. That the Court determine this action may be maintained as a class action;

22 As to the First Cause of Action:

23 2. For an order preliminarily and permanently enjoining Defendant from engaging in
24 the practices challenged herein;

25 3. An order for full restitution of all monies, as necessary and according to proof, to
26 restore any and all monies withheld by the Defendant by means of the unfair practice complained
27 of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as
28 necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§
200, et seq., 512, and interest, and attorneys' fees as a result of the unfair business practices or

1 retained in violation of Labor Code §512 and IWC Wage Order 5-2001;

2 4. For an order finding and declaring that Defendant's acts and practices as
3 challenged herein are unlawful, and unfair and/or fraudulent;

4 5. For an accounting, under administration of Plaintiff and subject to Court Review,
5 to determine the amount to be returned by Defendant and the amounts to be refunded to members
6 who are or were not paid all their wages due to Defendant's unfair business practices;

7 6. For the creation of an administrative process wherein each injured current and
8 former employee receives his or her back wages in the form of missed meal and rest period
9 premium pay or alternatively that each current or former eligible employee may submit a claim
10 in order to receive his/her money;

11 7. For an order requiring Defendant to make full restitution and payment pursuant to
12 B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et
13 seq., 512 and the applicable wage order;

14 8. For reasonable attorneys' fees under Code of Civil Procedure §1021.5 all other
15 appropriate declaratory and equitable relief;

16 9. For pre-judgment interest to the extent permitted by law;

17 10. For pre-judgment interest to the extent permitted by law and the California
18 Constitution;

19 11. For an order requiring Defendant to identify, by name, address and telephone
20 number of each person who worked as an hourly non-exempt employee for Defendant from four
21 (4) years before filing of the original complaint in this action through the time of judgment;

22 **As to the Second Cause of Action:**

23 12. One (1) hour of pay at each of the employees' regular rate of compensation for
24 each workday that a meal break was not provided, impeded, discouraged and/or dissuaded;

25 **As to the Third Cause of Action:**

26 13. One (1) hour of pay at each of the employees' regular rate of compensation for
27 each workday that a rest break was not remitted or authorized, or was impeded, discouraged
28 and/or dissuaded.

1 **As to the Fourth Cause of Action:**

2 14. For recovery as authorized by Labor Code §226(e);

3 15. For injunctive relief to ensure Defendant's compliance with Labor Code §226 and
4 the IWC Wage Orders §7(A) pursuant to Labor Code §226(g);

5 16. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
6 §226(e) and/or §226(g);

7 **Fifth Cause of Action:**

8 17. On behalf of all current and former hourly employees, for all civil penalties
9 authorized by Labor Code Private Attorney General Act of 2004 as specified in California Labor
10 Code §558 plus Labor Code §1197.1 for former or current employees who are due wage
11 payments;

12 18. For civil penalties per Labor Code §226.3 in the amount of \$250 for each
13 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee
14 per pay period for each subsequent violation;

15 19. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
16 same rate, for each day that an aggrieved employee was paid late, at the time of termination, until
17 payment was/is made, up to a maximum of thirty (30) days;

18 20. For civil penalties, pursuant to Labor Code § 558 as follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
20 for each pay period for which the employee was underpaid;

21 (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was underpaid;

23 21. For civil penalties under Labor Code §210, in addition to and entirely independent
24 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each
25 aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per
26 pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

27 22. For civil penalties under Labor Code §2699(f), in addition to and entirely
28

1 independent and apart from other penalty provided in the Labor Code and for Labor Code
2 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee
3 per pay period for each violation, and \$200 for each aggrieved employee per pay period for each
4 subsequent violation.

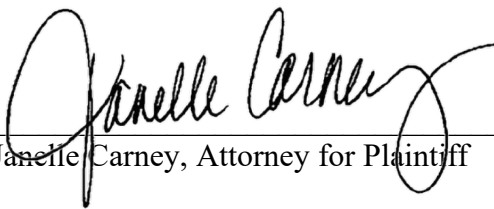
5 **As to All Causes of Action:**

6 23. For such other and further relief as this Court may deem just and proper.

7
8 Dated: May 4, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
SALUSKY LAW GROUP, APC

9
10
11 By:


Janelle Carney, Attorney for Plaintiff

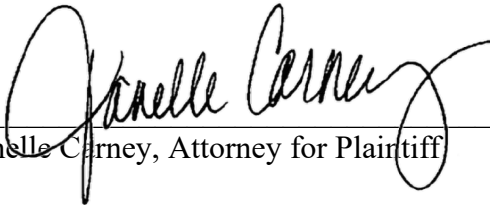
JURY TRIAL DEMAND

Plaintiff, Michelle Gaffney, hereby demand a jury trial on all issues so triable.

Dated: May 4, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
SALUSKY LAW GROUP, APC

By:



Janelle Carney, Attorney for Plaintiff

Exhibit 1



December 12, 2022

PAGA Administrator
CA Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612

Via: <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Shasta Regional Medical Center
1100 Butte St.
Redding, CA 96001

Via: Certified U.S. Mail/ Return Receipt Requested

Re: Gaffney v. Shasta Regional Medical Center

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION §§ 2699, *et seq.***

To: California Labor and Workforce Development Agency and Shasta Regional Medical Center

From: Michelle Gaffney, on behalf of herself and all aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Please be advised that Janelle Carney – Attorney at Law, APC and Salusky Law Group, APC, represent Michelle Gaffney and all other aggrieved employees (“Plaintiff”) defined as all hourly patient care employees, with respect to their employment with Shasta Regional Medical Center (“Shasta”).

Ms. Gaffney believes and alleges that Shasta has committed numerous violations of the California Labor Code, including, but not limited to, §§200, *et seq.*, 226, 226.7, 512, 1194, 1194.2, 1197, 1198. The facts and theories to support the alleged violations are set forth herein.

THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

A. Failure to Pay All Wages Meal and Rest Period Premiums

Plaintiff, Michelle Gaffney is a current hourly non-exempt employee for Shasta. Ms. Gaffney is suing on behalf of herself and all non-exempt hourly employees of Shasta. During her employment, Shasta has failed to pay Ms. Gaffney and other aggrieved employees the proper amount of meal and rest period premiums at the correct rates, due to improperly calculating the regular rate. When Shasta pays for missed meals and rest periods, it does so at the base rate instead of the regular rate, in violation of the Wage Order and Labor Code §226.7

B. Meal and Rest Breaks

1. Meal Break Claims

Shasta failed to provide Plaintiff and the aggrieved employees with duty-free meal and rest periods under California law. Shasta failed to adopt, implement, and enforce a uniform meal period policy that complied with California law. For example, Plaintiff alleges that the aggrieved employees were not provided uninterrupted duty-free meal periods for every five (5) hours worked, due to understaffing, no relief personnel, and being required to carry a work phone and answer calls while on break, as well as a heavy workload. Plaintiff complained about the failure to provide meal periods and that she misses them on a consistent basis.

As a result of Shasta's meal period violations, Shasta has violated Labor Code § 512 and 226.7 and the applicable Industrial Welfare Commission wage order.

2. Rest Breaks Claims

Defendant fails to authorize and permit employees from taking compliant rest periods by failing to authorize and permit a duty-free rest period for every four (4) hours or major fraction thereof. For example, Plaintiff alleges that the aggrieved employees were not provided uninterrupted rest period for every four (4) hours worked, due to understaffing, no relief personnel, and being required to carry a work phone and answer work calls while on a break, as well as a heavy workload. Further, Plaintiff and the aggrieved employees would have to answer calls on the company-issued phone during their rest breaks. These are not compliant rest breaks, as the rest breaks are not at least ten (10) minutes of uninterrupted, duty-free time.

As a result of Shasta's rest period violations, Shasta has violated Labor Code § 512 and 226.7 and the applicable Industrial Welfare Commission wage order.

C. Wage Statement Violations

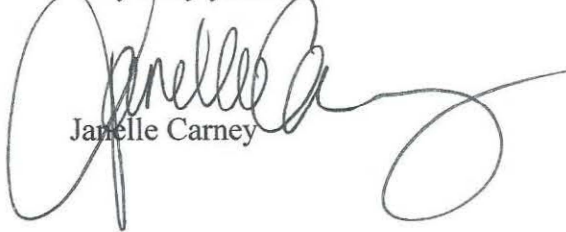
Ms. Gaffney alleges that Shasta willfully failed to provide properly itemized wage statements to Plaintiff and other aggrieved employees pursuant to Labor Code § 226. Specifically, Shasta's wage statements fail to include accurate information and are uniform for all employees. This is a derivative and a stand-alone claim as Defendant's pay stubs do not contain required elements of Labor Code §226, by failing to pay Plaintiff and the aggrieved employees the proper premium pay at the correct regular rate. Plaintiff and aggrieved employees have all received paystubs by Defendant by virtue of their employment that fail to include accurate information.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Gaffney becomes aware of additional compensation owed or losses incurred by Ms. Gaffney or by any other aggrieved employee of Shasta, Ms. Gaffney expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Ms. Gaffney intends to pursue her claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for Shasta that were subject to the same Labor Code violations described above.

Very truly yours,


Janelle Carney

JC/jw