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and all others similarly situated and aggrieved

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ZURI LAZARD, on behalf of herself and all
others similarly situated and aggrieved,

Plaintiff,

v.

COUNTY OF SANTA CLARA; and
DOES 1 through 10, Inclusive,

Defendants.

Case No. 23CV414401

**SECOND AMENDED CLASS ACTION
COMPLAINT AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Pay All Wages
2. Failure to Provide All Meal Periods
3. Failure to Provide All Rest Periods
4. PAGA Civil Penalties for Failure to Pay All Wages
5. PAGA Civil Penalties for Failure to Provide All Meal Periods
6. PAGA Civil Penalties for Failure to Provide Rest Periods
7. Failure to Pay All Wages (FLSA)

DEMAND FOR JURY TRIAL

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
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Case #23CV414401
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1 Plaintiff ZURI LAZARD, on behalf of herself, all others similarly situated, and as a
2 representative for the State of California, the California Labor and Workforce Development
3 Agency (“LWDA”), and on behalf of all other aggrieved employees, alleges:

4 **INTRODUCTION**

5 1. This is a class, collective, and representative action against the COUNTY OF
6 SANTA CLARA and Does 1-10 (“Defendant”). Plaintiff brings this action on behalf of herself
7 and all Defendant’s non-exempt employees subject to Defendant’s policies of suffering or
8 permitting uncompensated work by, among other reasons, paying employees based on rounded
9 time, rather than actual time under their control, automatically deducting 30 minutes of time in
10 shifts of five hours or more, whether a meal period was provided or not, and not providing rest
11 periods, starting three years before this action was filed (Fair Labor Standards Act, “FLSA,”
12 “FLSA Class Period,” “Covered Employees”), and four years before this action was filed
13 (“Class Period,” “Class Members”).

14 2. Plaintiff gave written notice of these claims and allegations to the California
15 Labor and Workforce Development Agency (“LWDA”) on April 18, 2023. As there has been
16 no LWDA intervention within 65 days of that notice, Plaintiff asserts claims for civil penalties
17 as a representative of the State of California, as authorized by the Private Attorneys General
18 Act of 2004 (“PAGA”), and has standing as an aggrieved employee. Plaintiff seeks to represent
19 all Defendant’s non-exempt employees in the State of California who suffered one or more of
20 the violations alleged (“aggrieved employees”) during the “PAGA Period” (one year and 65
21 days from the date of the filing of the First Amended Complaint until the start of trial). Labor
22 Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

23 **JURISDICTION AND VENUE**

24 3. Venue as to each Defendant is proper in this judicial district. Code of Civil
25 Procedure, section 395. Defendant conducts business in Santa Clara County, and is within the
26 Court’s jurisdiction for service of process. The unlawful acts alleged have a direct effect on
27 Plaintiff and those similarly situated and aggrieved within Santa Clara County. Individual class
28 member claims are under the \$75,000 jurisdictional threshold for federal jurisdiction.

5. ZURI LAZARD worked as a Per Diem Clinical Nurse with Defendant in San Jose, California, starting in March 2019. She worked at O'Connor Hospital, and her employment terminated in September 2022.

7. True names and capacities of DOES 1 through 10 are unknown to Plaintiff, who sues them by fictitious names. Code of Civil Procedure § 474. Plaintiff is informed, believes, and alleges, each DOE Defendant is legally responsible in some manner for unlawful acts alleged. Plaintiff will amend to add names and capacities of DOE Defendants when they become known.

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

9. Plaintiff re-alleges all preceding paragraphs.

10. During all, or a part, of the Class, FSLA Class, and PAGA Periods, Plaintiff, each member of the Classes, and each aggrieved employee, were employed by Defendant in the State of California, including in the County of Santa Clara.

11. Notwithstanding any agreement to work for a lesser wage, an employee receiving less than legal minimum wage for any time under an employer's control may recover the full amount of those wages, including interest, reasonable attorneys' fees, and costs of suit, and liquidated damages equal to unpaid wages and interest when an employer fails to pay the minimum wage fixed by statute or commission order, or the minimum or overtime wage rate required by the FLSA. Labor Code §§ 1194, 1194.2; 29 U.S.C. §§ 206, 216b.

- 2 -

1 12. Plaintiff, each Class Member, Covered Employee, and each aggrieved employee
2 were non-exempt employees covered under one or more Industrial Welfare Commission Wage
3 Orders (“Wage Orders”), and Labor Code sections 1194, 1194.2, 1197, 1197.1, 29 U.S.C. §§
4 206, 216b, and other applicable orders, regulations, and statutes, and each Member, Covered
5 Employee, or aggrieved employee was not subject to executive, administrative, professional, or
6 other exemptions, and Defendant is obligated to pay Plaintiff, Class Members, and aggrieved
7 employees all lawful wages.

8 13. Plaintiff and Patient Care Subclass Members were non-exempt employees
9 covered under one or more Wage Orders, and Labor Code section 512.1, and Defendant was
10 obligated to provide Subclass Members compliant rest and rest and meal periods and an hour of
11 pay at regular rates for each workday a meal or rest period was not provided.

12 14. During all, or a part of, the Class and PAGA Periods, Defendant maintained
13 policies which failed to pay Plaintiff, Class Members, Covered Employees, and aggrieved
14 employees at least minimum wages for all hours worked, including by paying based on
15 rounded time, rather than actual time worked. Defendant employed non-exempt employees in
16 all its departments and operating units.

17 15. During the Class and PAGA Periods, Plaintiff, Class Members, Covered
18 Employees, and aggrieved employees were required to, and did, clock in and out for each shift,
19 but Defendant rounded these time entries, reducing the number of hours Plaintiff, Class
20 Members, Covered Employees, and aggrieved employees were paid wages.

21 16. During the Class and PAGA Periods, Defendant automatically deducted at least
22 30 minutes during each shift of five hours or more from Class Members, Covered Employees,
23 and aggrieved employees’ time, whether compliant meal periods were provided or not.

24 17. During the Class and PAGA Periods, Defendant did not pay Class Members,
25 Covered Employees, and aggrieved employees an hour of pay at regular rate for each workday
26 a meal or rest period was not provided.

27 18. During the Class and PAGA Periods, the statutory right of Plaintiff, Class
28 Members, Covered Employees, and aggrieved employees to be paid at least minimum wage for

1 all hours worked was not subject to negotiation, only existed and was only conferred by virtue
2 of California law, and could not be the subject of an agreement, individual or collective, and no
3 collective bargaining agreement or memorandum of agreement existed or applied to Plaintiff,
4 Class Members, and aggrieved employees which could in any way limit, impinge, or burden
5 their right to be paid at least minimum wage for all hours worked.

6 19. During the Class Period, no collective bargaining agreement or memorandum of
7 agreement existed or applied to Plaintiff or Class Members, which purports to provide, or more
8 importantly, could in fact actually provide, the class-wide relief sought in this Complaint,
9 including, but not limited to, the jurisdiction of this Court, including its authority to order:
10 contact information of absent class members be produced to counsel for Plaintiff and the
11 putative Class, or alternatively, notice be given to putative class members informing them they
12 may opt-out of providing their contact information and that they will not be retaliated against
13 by Defendant whether or not they choose to opt-out; the discovery of all information, and the
14 testimony of all witnesses, needed to investigate and prove the claims of the Class, including
15 the power to enforce compliance with discovery orders by assessing monetary, evidentiary, or
16 terminating sanctions against Defendant for failure to comply with its orders; the issuance of
17 protective orders as needed to protect the privacy of Plaintiff and putative Class Members;
18 certification of a class and notice to Class Members they may be represented by counsel for the
19 named Plaintiff or opt out of the Class and pursue independent remedies through their own
20 individual counsel and that they will not be retaliated against by Defendant whether they opt
21 out or not; and, certification of a Class for purposes of dispositive motions and trial which will
22 decide issues between the Class Members and Defendant and provide all available relief to all
23 Class Members in a single action, including injunctive relief.

24 20. During the PAGA Period, no collective bargaining agreement or memorandum
25 of agreement existed or applied to Plaintiff or aggrieved employees which purports to provide,
26 or more importantly, could in fact actually provide, the relief sought in this Complaint,
27 including, but not limited to, the jurisdiction of this Court, including its authority to order:
28 contact information of aggrieved employees be produced to counsel for Plaintiff, or

1 alternatively, notice be given to aggrieved employees informing them they may opt out of
2 providing their contact information and that they will not be retaliated against by Defendant
3 whether or not they choose to opt out; the discovery of all information, and the testimony of all
4 witnesses, needed to investigate and prove the claims of the aggrieved employees, including the
5 power to enforce compliance with discovery orders by assessing monetary, evidentiary, or
6 terminating sanctions against Defendant for failure to comply with its orders; the issuance of
7 protective orders as needed to protect the privacy of Plaintiff and aggrieved employees; rule on
8 dispositive motions and conduct a trial which will decide issues between the aggrieved
9 employees and Defendant and provide all available relief to all aggrieved employees in a single
10 action, including injunctive relief.

11 21. During the FLSA Class Period, no collective bargaining agreement or
12 memorandum of agreement existed or applied to Plaintiff or Covered Employees, which
13 purports to provide, or more importantly, could in fact actually provide, the class-wide relief
14 sought in this Complaint, including, but not limited to, the jurisdiction of this Court, including
15 its authority to order: conditional class certification; notice to Covered Employees explaining
16 the claims and remedies sought and allowing them to opt-in; contact information of Covered
17 Employees be produced to counsel for Plaintiff and Covered Employees; the discovery of all
18 information, and the testimony of all witnesses, needed to investigate and prove the claims of
19 Covered Employees, including the power to enforce compliance with discovery orders by
20 assessing monetary, evidentiary, or terminating sanctions against Defendant for failure to
21 comply with its orders; the issuance of protective orders as needed to protect the privacy of
22 Plaintiff and Covered Employees; and, certification of a Class for dispositive motions and trial
23 which will decide issues between Covered Employees and Defendant and provide all available
24 relief to all Covered Employees in a single action, including injunctive relief.

25 22. As to Plaintiff and the Patient Care Subclass, from January 1, 2023 until August
26 13, 2023, Defendant did not have any collective bargaining agreement or memorandum of
27 agreement which could provide any remedy for violations of Labor Code section 512.1.

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CLASS ACTION ALLEGATIONS

23. Plaintiff re-alleges all preceding paragraphs.

24. Plaintiff seeks to represent a Class defined as:

All persons employed by Defendants as non-exempt employees, at any time starting four years from the filing of this Complaint.

25. Plaintiff seeks to certify a Subclass defined as:

Patient Care

Class Members providing direct patient care or supporting direct patient care in general acute care hospital, clinic, or public health settings.

26. Plaintiff reserves the right to modify the Class description or further divide it into subclasses or limit it to particular issues based on further investigation and discovery.

27. This action may be maintained as a class action because many persons have a well-defined common interest and it is impractical to bring them all before the court. Code of Civil Procedure § 382.

28. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable and can be identified and located by Defendant's payroll and personnel records.

29. **Numerosity**: While the precise number of Class Members has not yet been determined, Plaintiff is informed and believes there are over 100 putative Class Members in California affected by Defendant's policies. Joinder of all members of the proposed Class is not practicable

30. **Typicality**: Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff and Class Members sustained injuries and damages caused by Defendant's common course of conduct in violation of laws, regulations, and statutes as alleged.

31. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and protect the interests of the Class Members. Proposed Class Counsel, Cohelan Khoury & Singer and Majarian Law Group, APC, who represent Plaintiff, are competent and experienced in litigating employment class actions. Plaintiff is aware and understands her obligations to faithfully assist in the preparation of the case and to make decisions in the best interests of the putative Class.

1 32. **Superiority of Class Action**: A class action is superior to other available means
2 for the fair and efficient adjudication of this controversy. Each Class Member has been
3 damaged, and is entitled to recovery, by Defendant's illegal policies and practices, and a Class
4 action allows them to litigate their claims in the most efficient and economical manner for the
5 parties and judicial system. There are no likely difficulties managing this action that preclude
6 its maintenance as a class action.

7 33. Predominating common questions of law and fact include:

8 a. Whether Defendant compensated Class Members for all hours worked or
9 under its control by paying based on rounded, rather than actual time;

10 b. Whether Defendant compensated Class Members for all hours worked or
11 under its control by automatically deducting time for meal periods;

12 c. Whether Defendant provided all meal and rest periods to Patient Care
13 Subclass Members; and

14 d. Whether Defendant provided Patient Care Subclass Members with one
15 hour of pay at the regular rate of pay each workday it did not authorize and permit a rest period,
16 or provide a meal period.

17 **FIRST CAUSE OF ACTION**

18 **Failure to Pay All Wages**

19 **(By Plaintiff and the Class against each Defendant)**

20 34. Plaintiff re-alleges all preceding paragraphs.

21 35. By failing to pay all wages for hours Plaintiff and Class Members were under its
22 control, including by rounding time downward to their detriment, and automatically deducting
23 time for meals not provided, Defendant failed to pay all earned wages and violated laws and
24 regulations having the force of law, including Labor Code sections 1194, 1197, 1197.1, IWC
Wage Orders, and local minimum wage ordinances.

25 36. Defendant's unlawful acts deprived Plaintiff and Class Members of wages in
26 amounts to be determined at trial, and they are entitled to recover these amounts, with
27 liquidated damages for unpaid minimum wages, and interest, attorneys' fees, and costs.

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SECOND CAUSE OF ACTION

Failure to Provide All Meal Periods

(By Plaintiff and Patient Care Subclass against each Defendant)

37. Plaintiff re-alleges all preceding paragraphs.

38. By failing to provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, starting before the end of the fifth hour of work, and failing to pay Plaintiff and Patient Care Subclass Members one hour of pay at their regular rate for each day a meal period was not provided, Defendant willfully violated Labor Code sections 226.7 and 512.1, and IWC Wage Orders.

39. Defendant's unlawful acts deprived Plaintiff and Patient Care Subclass Members of premium wages or other compensation in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

THIRD CAUSE OF ACTION

Failure to Provide All Rest Periods

(By Plaintiff and Patient Care Subclass against each Defendant)

40. Plaintiff re-alleges all preceding paragraphs.

41. By failing to provide uninterrupted duty-free rest periods of at least ten minutes for shifts of three and one-half hours or more, a second for shifts of four to six hours, and a third for shifts of ten or more hours and failing to pay Plaintiff and Patient Care Subclass Members one hour at their regular rate for each day a rest period was not authorized or permitted, Defendant willfully violated Labor Code §§ 226.7, 512.1, and IWC Wage Orders.

42. Defendant's unlawful acts deprived Plaintiff and Patient Care Subclass Members of premium wages or other compensation in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

FOURTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Pay All Wages

(By Plaintiff and Each Aggrieved Employee)

43. Plaintiff re-alleges all preceding paragraphs.

44. Labor Code section 2699(a) provides: "[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or

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

45. Labor Code section 2699(f)(2) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is 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.”

46. Plaintiff and other aggrieved employees were not paid all earned wages.

47. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

FIFTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Provide All Meal Periods (By Plaintiff and Each Patient Care Aggrieved Employee)

48. Plaintiff re-alleges all preceding paragraphs.

49. As alleged, Plaintiff and other aggrieved employees were not always provided with a compliant 30-minute meal period after five hours of work nor were they provided with premium wages to account for these violations.

50. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not provided a compliant meal period or premium wages in lieu thereof, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

SIXTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Provide All Rest Periods (By Plaintiff and Each Patient Care Aggrieved Employee)

51. Plaintiff re-alleges all preceding paragraphs.

1 52. As alleged, Plaintiff and other aggrieved employees were not always provided
2 with a compliant 10-minute paid rest period after four hours, or major fraction thereof, of work,
3 nor were they provided with premium wages to account for these violations.

4 53. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
5 not provided a compliant rest period or premium wages in lieu thereof, and \$200 for each
6 subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in
7 accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of
8 the State of California. The amount of the applicable penalty will be proven at trial.

9 **SEVENTH CAUSE OF ACTION**

10 **Failure to Pay All Wages - FLSA**

11 **(By Plaintiff and the Covered Employees against each Defendant)**

12 54. Plaintiff re-alleges all preceding paragraphs.

13 55. At all relevant times, Plaintiff and Covered Employees have been similarly
14 situated, with similar pay provisions, and been subject to Defendants' common practices,
15 policies and procedures of willfully failing to pay legally required minimum and overtime
16 wages, including by failing to include all compensation to determine the regular rate of pay.
17 Plaintiff's claims are similar to those of the other Covered Employees.

18 56. Plaintiff Zuri Lazard's signed consent is attached as Exhibit "A." Plaintiff is
19 informed, believes and alleges many other Covered Employees will sign and file consents to
20 join this lawsuit if given the opportunity to do so.

21 57. By failing to pay all wages for hours Plaintiff and Covered Employees were
22 under its control, including by rounding time down and automatically deducting time for meals
23 not provided, Defendant failed to pay all minimum and overtime wages. 29 U.S.C. §§ 206,
24 216b. This Court has concurrent jurisdiction over this cause of action and it is properly brought
25 and may be maintained as an opt-in collective action. Class Members contact information is
26 readily available from Defendants and notice can be provided, including by first class mail.

27 58. Defendant's unlawful acts deprived Plaintiff and Class Members of wages in
28 amounts to be determined at trial, and they are entitled to recover these amounts, with interest,
and an equal amount as liquidated damages, and attorneys' fees, and costs.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

- A. For certification of this action as a class action;
- B. Determine this action may be maintained as a collective action, with Plaintiff serving as Class Representative and his counsel serving as Class Counsel;
- C. For Facilitated Notice under 29 USC § 216b;
- D. All minimum and overtime wages, and interest, and an equal amount as liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 206, 207, 216b;
- E. For appointment of Plaintiff as the representative of the Class and Subclass;
- F. For appointment of counsel for Plaintiff as Class Counsel;
- G. For injunctive relief;
- H. For compensatory damages in an amount according to proof;
- I. For all interest accrued to date;
- J. That this action be maintained as a PAGA Representative Action and that Plaintiff and her counsel be provided with enforcement capability as if the action were brought by the DLSE;
- K. For recovery of all civil penalties as allowed by Labor Code section 2699, according to proof, for unpaid wages, Labor Code §§ 510, 860, 1194, 1194.2;
- L. For recovery of all civil penalties as allowed by Labor Code section 2699, according to proof, for unpaid meal period premium wages under Labor Code section 226.7;
- M. For recovery of all civil penalties as allowed by Labor Code section 2699, according to proof, for unpaid rest period premium wages under Labor Code section 226.7;
- N. For all civil penalties to be distributed 75 percent to the LWDA and 25 percent to the aggrieved employees pursuant to Labor Code section 2699(i);
- O. For reasonable attorneys' fees and costs; and
- P. For such other relief the Court deems just and proper.

COHELAN KHOURY & SINGER
MAJARIAN LAW GROUP, APC

Dated: May 16, 2024

By:



Jeff Geraci, Esq.

Attorneys for Plaintiff ZURI LAZARD, on behalf of
herself and all others similarly situated and aggrieved

DEMAND FOR JURY TRIAL

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

COHELAN KHOURY & SINGER
MAJARIAN LAW GROUP, APC

Dated: May 16, 2024

By:



Jeff Geraci, Esq.

Attorneys for Plaintiff ZURI LAZARD, on behalf of
herself and all others similarly situated and aggrieved

EXHIBIT A

FLSA CONSENT

I, Zuri Lazard, consent to join this action asserting claims arising under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., against Defendant COUNTY OF SANTA CLARA; and DOES 1 THROUGH 10, inclusive.

5/16/2024
Date

Zuri Lazard
Signature

PROOF OF SERVICE

Lazard v. County of Santa Clara

Santa Clara Superior Court Case No. 23CV414401

I, Amber Worden, declare as follows:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

On May 16, 2024, I instituted service of the forgoing document(s) described as:

**SECOND AMENDED CLASS ACTION COMPLAINT AND REPRESENTATIVE ACTION
COMPLAINT**

on the following interested parties:

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in the manner described below:

[XX] BY ELECTRONIC SERVICE – GREENFILING: Pursuant to Cal. Rules of Court, Rule 2.251(c)(3), I submitted an electronic version of the document(s) through the user interface of the e-filing vendor at www.greenfiling.com.

[XX] STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed May 16, 2024 at San Diego, California.


Amber Worden