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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ISELA G. MENDEZ PALACIOS and
KRISTEN SAMSON, on behalf of the State of
California,

Plaintiff,

v.

ORANGE COUNTY GLOBAL MEDICAL
CENTER, INC., a Minnesota Corporation; and
DOES 1-50, inclusive.

Defendants.

CASE NO.: 30-2023-01319127-CU-OE-CXC

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

Assigned for All Purposes
Judge Randall J. Sherman
Dept. CX105

1 Plaintiffs Isela G. Mendez Palacios and Kristen Samson (“Plaintiffs”) on behalf of the State
2 of California hereby brings this PAGA Representative Action Complaint (“Complaint”) against
3 defendant Orange County Global Medical Center, Inc. (“Defendant”), and DOES 1 to 50
4 (collectively, “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendants provide advanced comprehensive medical care with its 282-licensed bed
7 facility in Orange County, California.

8 2. Plaintiffs bring this PAGA representative action solely on behalf of the State of
9 California against Defendants for alleged violations of the California Labor Code and applicable
10 Wage Orders of the IWC.

11 3. As set forth below, Plaintiffs allege that Defendants failed and continue to fail to pay
12 all overtime and sick pay wages due to Defendants’ failure to properly calculate the “regular rate of
13 pay,” that Defendants’ meal and rest period policies and practices failed to provide them and all other
14 similarly situated employees with compliant meal and rest periods or pay premium pay at the “regular
15 rate of pay” in lieu thereof. Plaintiffs further allege that Defendants failed to reimburse them and
16 other non-exempt employees for all necessary business expenditures. As a result, Plaintiffs allege that
17 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
18 and failed to timely pay all final wages upon separation of employment.

19 **JURISDICTION**

20 4. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on
21 behalf of the State of California and the group of aggrieved employees defined as follows: “All
22 individuals who are or were employed as hourly, aggrieved, employees by Defendants, or their
23 predecessors or merged entities, in the State of California from April 6, 2022, and continuing to the
24 present (“aggrieved employees).”

25 5. Plaintiff, of behalf of the State of California brings this representative action pursuant
26 to Labor Code § 2698, *et seq.* seeking penalties for Defendants’ violation of California Labor Code
27 §§ 201-203, 204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199,
28 2802, and all applicable IWC Wage Orders.

6. Based upon the foregoing, Plaintiffs and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2699, *et seq.*

7. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the State of California so as to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Orange. Defendants own, maintain offices, transact business, have an agent or agents within the County of Orange, and/or otherwise are found within the County of Butte, and Defendants are within the jurisdiction of this Court for purposes of service of process.

9. In determining proper venue for a PAGA Action, a Plaintiff is not limited to the county/counties in which he or she suffered Labor Code violations, but instead may file suit in any county in which an allegedly aggrieved employee suffered a Labor Code violation. (*See Crestwood Behavioral Health v. Superior Court* (2021) 60 Cal.App.5th 1069.)

PARTIES

10. At all relevant times herein, Plaintiffs, who are over the age of 18, were and currently are residing in the State of California.

11. Plaintiffs are informed and believes and thereon alleges that Defendant Orange County Global Medical Center, Inc., is a California corporation authorized to and doing business in California and is and/or was the legal employer of Plaintiffs and the aggrieved employees during the applicable statutory periods. Plaintiffs were and are victims of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to them by California Labor Code §§ 201-203, 204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, 2802, and applicable Wage Orders.

12. Plaintiffs are informed and believe, and based thereon alleges, that at all relevant times preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to

1 do) business in the State of California, County of Orange.

2 13. Plaintiffs do not know the true names or capacities, whether individual, partner, or
3 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
4 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
5 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed,
6 and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners,
7 or corporate, were responsible in some manner for the acts and omissions alleged herein, and
8 proximately caused Plaintiffs and the aggrieved employees to be subject to the unlawful employment
9 practices alleged herein.

10 14. Plaintiffs are informed, and believe, and thereon alleges, that at all times mentioned
11 herein, Defendants were and are the employers of Plaintiffs and the aggrieved employees. At all times
12 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
13 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
14 the agents, servants, and employees of each and every one of the other Defendants, as well as the
15 agents of all Defendants, and at all times herein mentioned were acting within the course and scope
16 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
17 otherwise ratified each and every one of the acts or omissions complained of herein.

18 15. At all times mentioned herein, Defendants, and each of them, were members of and
19 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
20 scope of and in pursuance of said joint venture, partnership, and common enterprise.

21 16. Further, Plaintiffs allege that all Defendants were joint employers for all purposes of
22 Plaintiffs and the aggrieved employees.

23 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

24 17. Defendants provide advanced comprehensive medical care with its 282-licensed bed
25 facility in Orange County, California.

26 18. Plaintiff Isela G. Mendez Palacios was employed by Defendants as a non-exempt
27 employee with the title of "Food Service" out of its Santa Ana, California location.

1 19. Plaintiff Kristen Samson was employed by Defendants as a non-exempt employee
2 with the title of “Registered Nurse” out of its Santa Ana, California location.

3 20. Plaintiffs and other non-exempt employees were employed as hospital workers,
4 transporters, food workers, case managers and all other non-exempt positions working for Defendants
5 in the State of California.

6 21. At all relevant times, Plaintiffs and other aggrieved employees regularly worked
7 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
8 Plaintiffs alleges that other non-exempt employees were also subjected to the same systemic
9 violations as well as policies, procedures, and practices, working conditions, and corresponding wage
10 and hour violations to which Plaintiffs were subjected during their employment.

11 22. First, at all relevant times, Plaintiffs and other aggrieved employees were not properly
12 paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or
13 forty (40) hours per workweek. Although Plaintiffs and other non-exempt employees regularly
14 worked overtime hours, they were not compensated at one and one-half times their “regular rate of
15 pay” because Defendants failed to include all forms of compensation, including, but not limited to,
16 shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when
17 calculating the “regular rate of pay” used for payment of overtime wages.

18 23. Under the California Labor Code (as well as the FLSA), courts have consistently held
19 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
20 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
21 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
22 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
23 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
24 California and federal law on the grounds, that Defendant improperly calculated overtime by
25 excluding annual bonuses paid to employees from the “regular rate of compensation”].)

26 24. By their policy of requiring Plaintiffs and the other aggrieved employees to work in
27 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
28 them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendants willfully violated

1 the provisions of Labor Code § 510 and the applicable Wage Orders.

2 25. Accordingly, to the extent permitted by law, Plaintiffs and other aggrieved employees
3 are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510,
4 1197.1.

5 26. Similarly, at all relevant times, Defendants also failed in its obligation to provide
6 Plaintiffs and other aggrieved employees the legally required paid sick days at the legal rate pursuant
7 to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works
8 in California for the same employer for 30 or more days within a year from the commencement of
9 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
10 worked, beginning at the commencement of employment.” Labor Code § 246(l)(1) provides that paid
11 sick time for non-exempt employees must be “calculated in the same manner as the regular rate of
12 pay for the workweek in which the employee uses paid sick time, whether or not the employee
13 actually works overtime in that workweek.”

14 27. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
15 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
16 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
17 requires employers to “provide an employee with written notice that sets forth the amount of paid
18 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
19 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
20 on the designated pay date with the employee’s payment of wages.”

21 28. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiffs and
22 other non-exempt employees the legally required paid sick days at the legal rate, including all forms
23 of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants paid sick time below
24 his base rate of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2).
25 Based on the foregoing Labor Code violations, Plaintiffs seek all civil and statutory penalties
26 available and applicable under Labor Code §§ 246 and 2698 *et seq.*

27 29. Moreover, at all relevant times, Plaintiffs and other aggrieved employees were denied
28 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to

1 Defendants' uniform meal period policies/practices and work demands/operational requirements,
2 Plaintiffs and other aggrieved employees were often unable to take timely and uninterrupted 30-
3 minute first meal periods before the end of the fifth hour of work. Further, when Plaintiffs and other
4 aggrieved employees worked more than 10 hours in a shift, they were not always allowed and
5 permitted to take a mandated second meal period before the end of the tenth hour of work in violation
6 of the Labor Code and applicable Wage Orders.

7 30. Additionally, for each missed or non-compliant meal period, Defendants failed to
8 maintain a mechanism by which non-exempt employees were paid meal period premiums at the
9 "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
10 Code § 226.7. Accordingly, due to Defendants' uniform meal period practices, Plaintiffs and other
11 aggrieved employees were also regularly denied legally compliant meal periods in violation of Labor
12 Code 226.7, 510, 516, and applicable IWC Wage Orders.

13 31. Moreover, at all relevant times, Plaintiffs and other aggrieved employees were not
14 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
15 to Defendants' uniform rest period policies/practices and operational requirements. As a result,
16 Plaintiffs and other aggrieved employees were and are often unable to take a net 10-minute duty free
17 rest periods for every major fraction of four hours worked. This includes a second rest period for
18 shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

19 32. By not relieving all non-exempt employees of all duties during rest periods,
20 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
21 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve
22 employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*,
23 the California Supreme Court expressly rejected the employers' assertion that it could provide an on-
24 duty rest period to employees who worked as security guards and further explained "that employers
25 [must] relinquish any control over how employees spend their break time and relieve their employees
26 of all duties." *Id.* at 273.

27 33. Each time Plaintiffs and other aggrieved employees were unable to take a compliant
28 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments

1 at the “regular rate of pay” as required by Labor Code § 226.7.

2 34. Accordingly, due to Defendants’ uniform rest period policies/practices and work
3 demands, Plaintiffs and other aggrieved employees were also regularly denied legally compliant rest
4 breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

5 35. Moreover, at all relevant times, Plaintiffs and other aggrieved employees, at the
6 direction of Defendants and/or with Defendants’ knowledge and acquiescence, have used their
7 personal cell phones as well as other necessary business expenses in the discharge of their duties.
8 However, Defendants failed to reimburse Plaintiffs and other aggrieved employees for the reasonable
9 portion of their monthly personal cell phone bills and other expenses necessarily incurred in their
10 discharge of their duties, as required by *Cochran v. Schwan’s Home Service, Inc.* (2014) 228
11 Cal.App.4th 1137.

12 36. As such, Defendants have failed to reimburse Plaintiffs and other aggrieved
13 employees in violation of the California Labor Code Section 2802-2804.

14 37. As a result of Defendants’ unlawful reimbursement policy/practices, Plaintiffs seek to
15 recover on behalf of themselves and all other non-exempt employees necessary expenditures, losses,
16 and penalties under Labor Code § 2802.

17 38. As a result of Defendants’ failure to pay Plaintiffs and other non-exempt employees
18 for all overtime and sick pay wages, and Defendants’ failure to pay for meal and rest period premiums
19 at the “regular rate of pay”, Defendants issued wage statements which failed to accurately identify
20 the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding
21 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

22 39. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
23 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
24 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
25 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
26 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

27 40. Thus, for the violations of Labor Code § 226 described above, Plaintiffs and other
28 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of

1 Labor Code § 226(a).

2 41. As a further result of Defendants' failure to pay all overtime, sick pay wages, and meal
3 and rest period premiums at the "regular rate of pay", Defendants also failed and continues to fail to
4 pay other aggrieved employees all wages, as well as accrued and unused paid time off, owed at their
5 time of separation from employment in violation of Labor Code §§ 201-203.

6 **FIRST CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 *(Plaintiffs and Similarly Aggrieved Employees Against All Defendants)*

9 42. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in
10 the preceding paragraphs.

11 43. Defendants have committed several Labor Code violations against Plaintiffs and
12 other similarly aggrieved employees. Plaintiffs are "aggrieved employees" within the meaning of
13 Labor Code § 2698 *et seq.*, acting on behalf of the State of California, bring this representative action
14 against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees,
15 and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including,
16 but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per
17 employee per pay period for those violations of the Labor Code for which no civil penalty is
18 specifically provided based on the following Labor Code violations:

19 (a) Defendants' failure to pay all overtime wages at the "regular rate of pay" because
20 Defendants failed to include all forms of compensation, including, but not limited to, shift
21 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration.

22 (b) Defendants' failure to pay all wages in a timely fashion in violation of Labor Code §
23 204;

24 (c) Defendants' failure to pay all sick pay at the "regular rate of pay";

25 (d) Defendants' failure to provide legally compliant meal and rest periods or proper
26 compensation at the "regular rate of pay" in lieu thereof to rate;

27 (e) Defendants' failure to allow and permit legally compliant rest periods or compensation
28 at the "regular rate of pay" in lieu thereof;

1 (f) Defendants' failure to furnish legally compliant wage statements pursuant to Labor
2 Code § 226(a);

3 (g) Defendants' failure to timely pay final wages to aggrieved employees at the time of
4 separation from employment were unlawful; and

5 (h) Defendants' failure to reimburse aggrieved employees for necessary business
6 expenditures in violation of Labor Code § 2802.

7 44. On or about April 6, 2023 and June 13, 2023, Plaintiffs notified Defendant Orange
8 County Global Medical Center, Inc. ("Defendant") via certified mail, and the California Labor and
9 Workforce Development Agency ("LWDA") via its website of Defendant's violations of the
10 California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code
11 identified in Paragraph 34(a)-(h).

12 45. Now that sixty-five days (65) have passed since Plaintiffs notifying Defendant of these
13 violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the
14 Private Attorneys General Act with respect to these violations.

15 46. Plaintiffs were compelled to retain the services of counsel to file this court action to
16 protect their interests and the interests of other similarly aggrieved employees, and to assess and
17 collect the civil penalties owed by Defendants. Plaintiffs have therefore incurred attorneys' fees and
18 costs, which he is entitled to receive under California Labor Code § 2698 *et seq.*

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiffs pray for judgment on behalf of the State of California against
21 Defendants, as follows:

22 1. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other similarly
23 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
24 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
25 subsequent violation per employee per pay period for those violations of the Labor Code for which
26 no civil penalty is specifically provided under the Labor Code;

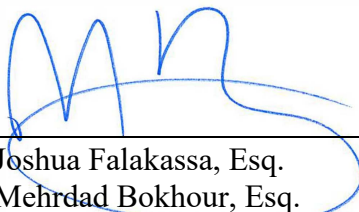
27 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
28 of Civil Procedure §1021.5; and

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3. For such other and further relief, the Court may deem just and proper.

Dated: September 18, 2023

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiffs and the Aggrieved Employees

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars,
Suite 450, Los Angeles, California 90067.

5 On September 18, 2023, I served the following document(s) described as **FIRST**
6 **AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT** on the interested parties in
this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

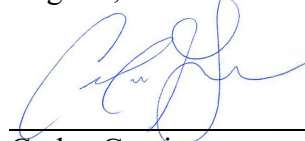
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12 **Counsel for defendant Orange County**
13 **Global Medical Center, Inc.**

14 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
15 electronic service provider First Legal to the person(s) identified above at the email address(es)
16 indicated and did not, within a reasonable time after transmission, receive any message or
communication indicating that delivery failed or that any other error had occurred which would
delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

18 Executed on September 18, 2023, at Los Angeles, California.

19 
20 _____
21 Carlos Garcia