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Superior Court of CA,
County of Santa Clara
24CV431989
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DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Kristen M. Agnew (State Bar No. 247656)
kagnew@diversitylaw.com
Nicholas Rosenthal (State Bar No. 268297)
nrosenthal@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Attorneys for Plaintiff and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

ELIZABETH DAUPHINAIS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SURGICARE OF SILICON VALLEY, LLC;
SILICON VALLEY SURGERY CENTER, L.P.;
BASCOM SURGERY CENTER; and DOES 1
through 50, inclusive,

Case No. 24CV431989

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
ET SEQ., THE PRIVATE ATTORNEYS
GENERAL ACT**

DEMAND OVER \$25,000.00

1 On behalf of herself and all other aggrieved employees, Plaintiff Elizabeth Dauphinais
2 (“Plaintiff”) submits this Representative Action Complaint against Defendants Surgicare of Silicon
3 Valley, LLC, Silicon Valley Surgery Center, L.P. and Bascom Surgery Center (collectively,
4 “Defendants”), and Does 1 through 50.

5 INTRODUCTION

6 1. The Complaint is within the Court’s jurisdiction under California Labor Code sections
7 226(a), 510, 558, 1194, 1197 and 1197.1, and 2698, *et seq.*

8 2. This Complaint challenges systemic illegal employment practices resulting in violations
9 of the California Labor Code against individuals who worked for Defendants.

10 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and
11 severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights
12 of all employees by: (a) failing to pay for all hours worked due to the unlawful rounding of employee
13 time, in violation of Labor Code sections 510, 558, 1194, 1197 and 1197.1; and (b) failing to provide
14 accurate, itemized wage statements, in violation of Labor Code section 226(a).

15 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
16 engaged in, among other things a system of willful violations of the California Labor Code, by creating
17 and maintaining policies, practices, and customs that knowingly deny employees the above stated rights
18 and benefits.

19 JURISDICTION AND VENUE

20 5. The Court has jurisdiction over the violations of the California Labor Code sections
21 226(a), 510, 558, 1194, 1197 and 1197.1, and 2698, *et seq.*, and the applicable Wage Orders.

22 6. Venue is proper in Santa Clara County because Plaintiff performed work for Defendants
23 in Los Gatos, California.

24 PARTIES

25 7. Plaintiff has been employed by Defendants since in or around August 2021. Throughout
26 her employment Plaintiff worked as an hourly, non-exempt employee.

27 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendants
28 complained of in this action in ways that have deprived her of the rights guaranteed by California Labor

Code sections 226(a), 510, 558, 1194, 1197 and 1197.1, and 2698, *et seq*, and the applicable Wage Orders.

9. Plaintiff is informed and believes and based thereon alleges that Defendant Surgicare of Silicon Valley, LLC is a Delaware limited liability company doing business in the State of California, including in Santa Clara County.

10. Plaintiff is informed and believes and based thereon alleges that Defendant Silicon Valley Surgery Center, L.P., was and is a limited partnership doing business in the State of California, including in Santa Clara County.

11. Plaintiff is informed and believes and based thereon alleges that Defendant Bascom Surgery Center, was and is a limited partnership doing business in the State of California, including in Santa Clara County.

12. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code, and the IWC Wage Orders.

13. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and Aggrieved Employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

14. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, Defendants, and each of them, were the agents, servants, and employees of each of the other defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

15. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

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

17. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

19. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees in the State of California from November 6, 2022, through the present, for Defendants' violations of Labor Code sections 226(a), 510, 558, 1194, 1197 and 1197.1, arising from Defendants' policy and practice of: (a) failing to pay for all hours worked due to the unlawful rounding of employee time, in violation of Labor Code sections 510, 558, 1194, 1197 and 1197.1; and (b) failing to provide accurate, itemized wage statements, in violation of Labor Code section 226(a).

20. As a pattern and practice, Defendants suffered and permitted Plaintiff and Aggrieved

1 Employees to work without payment of wages for all hours worked in a workday and workweek.
2 Specifically, as a pattern and practice, Defendants round employees' work hours and did not pay for
3 every minute that employees worked. Defendants utilize an electronic timekeeping system that captures
4 the exact time of punch entries. However, for the purpose of paying wages, Defendants round each punch to
5 the nearest quarter-hour. As a result, Defendants failed to pay for every minute that Plaintiff and
6 Aggrieved Employees worked. Plaintiff and the Aggrieved Employees are owed unpaid minimum and
7 overtime wages.

8 21. The wage statements provided to Plaintiff and Aggrieved Employees failed to identify the
9 name and address of the legal entity that is the employer, in violation of Labor Code section 226(a)(8).
10 More specifically, at various points during the relevant time period, Defendants' wage statements
11 identified three separate entities, with different addresses, as the employer. This practice precluded
12 Plaintiff and Aggrieved Employees from being able to accurately identify the actual legal entity and
13 address that is the employer.

14 22. As a separate violation of Labor Code section 226(a), the wage statements provided to
15 Plaintiff and Aggrieved Employees failed to identify the correct total hours worked. Whenever shift
16 differential wages (such as ExShf Pr) and/or overtime wages were paid, Defendants failed to adhere to
17 Labor Code section 226(a)(2)'s mandate that the wage statements accurately identify the total hours
18 worked by the employee during the pay period. Indeed, when Defendants paid shift differential and/or
19 overtime wages to Plaintiff and Aggrieved Employees, the hours displayed on the corresponding wage
20 statement do not equal the actual total hours worked during the pay period.

21 23. Additionally, as a result of Defendant's unlawful rounding practices, the wage statements
22 issued to Plaintiff and Aggrieved Employees identified incorrect hours worked, wage rates and net and
23 gross wages earned, in violation of Labor Code section 226(a).

24 24. On or about November 6, 2023, Plaintiff sent written notice to the California Labor &
25 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code sections 226(a),
26 510, 558, 1194, 1197 and 1197.1, pursuant to the PAGA. In addition to the LWDA, Plaintiff also sent
27 her notice to Defendants via certified mail pursuant to Labor Code section 2699.3.

28 25. As of the date of the filing of this Complaint, the LWDA has not responded to Plaintiff's

1 written notice nor indicated that it intends to investigate the Labor Code violations provided for in the
2 written notice.

3 26. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all
4 applicable civil penalties for Defendants' violations of Labor Code sections 226(a), 510, 558, 1194,
5 1197 and 1197.1 for the time period described above, on behalf of herself and other Aggrieved
6 Employees.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment for Plaintiff and all others on whose behalf this suit
9 is brought against Defendants, jointly and severally, as follows:

- 10 1. Upon the First Cause of Action, for the full amount of penalties pursuant to California
11 Labor Code sections 226(a), 510, 558, 1194, 1197, 1197.1 and 2698, *et seq.*, and for costs
12 and attorneys' fees;
13 2. For such other and further relief that the Court may deem just and proper.

14
15 DATED: February 27, 2024

DIVERSITY LAW GROUP, P.C.

16 By: _____

17 Larry W. Lee
18 Kristen M. Agnew
19 Nick Rosenthal

20 Attorneys for Plaintiff and the Aggrieved Employees
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