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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CHARLANA BOEGGEMAN and
BENJAMIN RICKS, individually and on
behalf of all others similarly situated

Plaintiffs,

v.

DIGNITY HEALTH, a California
Corporation; and DOES 1 through 100,
inclusive

Defendants.

Case No. CGC-24-613725

**FIRST AMENDED CLASS AND PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- 1. FAILURE TO AUTHORIZE AND PERMIT THIRD REST PERIODS**
- 2. FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**
- 3. VIOLATIONS OF THE UNFAIR COMPETITION LAW ("UCL")**
- 4. FAILURE TO AUTHORIZE AND PERMIT THIRD REST PERIODS UNDER PAGA**
- 5. FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS UNDER PAGA**
- 6. FAILURE TO TIMELY PAY FINAL WAGES UNDER PAGA**

DEMAND FOR JURY TRIAL

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

05/20/2024

Clerk of the Court

BY: WILLIAM TRUPEK

Deputy Clerk

I.

INTRODUCTION

1. Plaintiffs CHARLANA BOEGGEMAN and BENJAMIN RICKS (“Plaintiffs”) bring this putative class and PAGA representative action against their employer DIGNITY HEALTH, a California Corporation, and DOES 1-100 (collectively, “Defendants”). The putative class and aggrieved employees are all non-exempt nurses who worked shifts over ten hours who worked for Defendants at St. Elizabeth Community Hospital (“SECH”) any time during the four years, or one year, respectively, preceding the filing of this Complaint through April 30, 2023. Plaintiffs allege Defendants failed to provide them, the putative class, and aggrieved employees third rest periods or premiums in lieu thereof, and as a result, failed to provide accurate, itemized wage statements and violated California labor law and the California Unfair Competition Law (“UCL”), Bus. & Prof. Code sections 17200, *et seq.* Plaintiffs further allege Defendants failed to pay separated aggrieved employees outstanding rest period premium wages in their final wages.

II.

JURISDICTION & VENUE

2. Venue is proper in San Francisco County because it is the principal place of business for Defendant DIGNITY HEALTH. Cal. Code Civ. Proc. § 395.5.

3. No basis exists for removal to federal court. First, no federal question is implicated as the class and PAGA claims are based solely on California laws and regulations. See 28 U.S.C. § 1331. Second, there is no diversity of citizenship between Defendant DIGNITY HEALTH and any class member, and, on information and belief, the amount in controversy does not exceed \$5,000,000, exclusive of interest and costs. See 28 U.S.C. § 1332(d). Third, Plaintiffs are not diverse from Defendant DIGNITY HEALTH and are informed and believe that based on their rates of pay, their individual amounts in controversy do not exceed \$75,000 each, exclusive of interests and costs. See 28 U.S.C. § 1332(a).

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III.
PARTIES

4. Plaintiff CHARLANA BOEGGEMAN is a resident of Shasta County, California. She has been employed by Defendants as a non-exempt, registered nurse at the St. Elizabeth Community Hospital in Tehama County, California since July 2018.

5. Plaintiff BENJAMIN RICKS is a resident of Tehama County, California. He has been employed by Defendants as a non-exempt, registered nurse at the St. Elizabeth Community Hospital in Tehama County, California since November 2015.

6. Defendant DIGNITY HEALTH is a California Corporation, headquartered in San Francisco, which operates hospitals. St. Elizabeth Community Hospital (“SECH”) is part of the DIGNITY HEALTH network of hospitals. SECH, located at 2550 Sister Mary Columba Drive, Red Bluff in Tehama County, California provides various medical services to patients. See “St. Elizabeth Community Hospital,” <https://locations.dignityhealth.org/st-elizabeth-community-hospital> (last accessed May 14, 2024).

7. Plaintiffs do not know the true names or capacities of DOES 1 through 100, inclusive, and as such, sue them under fictitious names. Code Civ. Proc. § 474. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities when ascertained.

8. Plaintiffs allege, on information and belief, that each Defendant: employed Plaintiffs, putative Class Members, and aggrieved employees; exercised control over their wages, hours, and working conditions; and acted in all respects pertinent to this action as the agent of the other Defendants such that their acts can be attributed to one another.

IV.
GENERAL ALLEGATIONS

9. During the Class and PAGA Periods, Plaintiffs, the putative Class, and aggrieved employees were employed by Defendants in California.

10. During the Class and PAGA Periods, the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Order 5-2001 applied to Plaintiffs, the putative Class, and

1 aggrieved employees.

2 11. During the Class and PAGA Periods, Defendants maintained policies and
3 practices common to Plaintiffs, the putative Class, and aggrieved employees, including that
4 Defendants had a uniform policy and/or practice of failing to authorize and permit paid third
5 rest periods on shifts of more than 10 hours. Specifically, Defendants did not inform Plaintiffs,
6 the putative Class, and aggrieved employees of their right to take third 10-minute paid rest
7 periods on shifts over 10 hours and did not authorize or permit such third rest periods or pay
8 premiums in lieu thereof. As a result, Defendants also maintained a uniform policy and/or
9 practice of failing to provide accurate, itemized wage statements and complete final wages and
10 violated the UCL.

11 12. On information and belief, Defendants' practice of failing to authorize and
12 permit third rest periods extended through on or about March 31, 2023. As a result, liability
13 under Labor Code section 226 for Defendants' failure to pay premiums, and report premiums
14 on wage statements, extended through the date wages were paid and wage statements were
15 issued for the pay period including March 31, 2023.

16 V.

17 **CLASS ACTION ALLEGATIONS**

18 13. Plaintiffs bring this class action pursuant to Code of Civil Procedure section
19 382. The putative Class is defined as follows:

20 All non-exempt nurses who worked shifts over ten hours and who
21 worked for Defendants at St. Elizabeth Community Hospital
22 ("SECH") any time during the four years preceding the filing of
this Complaint through April 30, 2023.

23 14. Plaintiffs seek to certify the following subclass:

24 **Wage Statement Subclass**

25 All putative Class Members who worked at least one shift over 10
26 hours, and received at least one wage statement, during the one
year preceding the filing of this Complaint.

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15. Plaintiffs seek to certify the following subclass:

UCL Subclass

All putative Class Members who worked at least one shift over 10 hours during the four years preceding the filing of this Complaint.

16. Plaintiffs reserve the right under California Rules of Court, Rule 3.765(b), and other applicable law to amend or modify the putative Class definition. The Court can define the putative Class and create additional subclasses to adjudicate common issues if needed.

17. This action has been brought and may be maintained as a putative class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the putative Class is easily ascertainable through records Defendants are required to keep.

18. Numerosity. The putative Class, estimated on information and belief to contain at least 100 members, is so large that joining all members as plaintiffs is impracticable.

19. Commonality and Predominance. Common questions of law and fact exist, and predominate, as to all putative Class Members, including:

- a) Whether Defendants violated Labor Code section 226.7 and Section 12 of Wage Order 5-2001 by failing to authorize and permit third 10-minute paid rest periods on shifts over 10 hours, or pay one hour of pay in lieu thereof;
- b) Whether Defendants violated Labor Code section 226 by failing to provide accurate itemized wage statements, and if so, whether this failure was knowing and intentional, and caused injury;
- c) Whether Defendants' conduct, described above, violated the UCL; and
- d) To what extent DIGNITY HEALTH and each DOE defendant is liable.

20. Typicality. Plaintiffs' claim that Defendants failed to provide them third rest periods or premiums in lieu thereof, resulting in derivative wage statement and UCL liability, is typical of the putative Class.

21. Adequacy. Plaintiffs will adequately protect putative Class Members' interests. Plaintiffs have no interests adverse to the putative Class and are represented by attorneys with

substantial wage and hour class action experience.

22. Superiority. A class action is superior to individual actions. A class action will allow a large number of similarly-situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without unnecessary duplication of effort and expense. The damages suffered by each putative Class Member are relatively small, and the expense and burden of individual litigation would make it extremely difficult for individual putative Class Members to seek and obtain relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

EXHAUSTION OF PAGA NOTICE REQUIREMENT

23. Plaintiffs exhausted the notice requirement by filing a complaint with the Labor and Workforce Development Agency ("LWDA") in their letter dated March 8, 2024, as required under the California Labor Code Private Attorneys General Act ("PAGA"). The LWDA did not assume jurisdiction over the applicable penalty claims alleged; therefore, Plaintiffs have exhausted the procedural requirement under PAGA to pursue any and all penalty claims as provided under PAGA.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT THIRD REST PERIODS (Cal. Labor Code § 226.7; § 12 of IWC Wage Order 5-2001) (On behalf of Plaintiffs and the Third Rest Period Subclass Against Each Defendant)

24. Plaintiffs incorporate and re-alleges the preceding paragraphs.

25. Labor Code section 226.7 provides, in pertinent part:

(b) An employer shall not require any employee to work during any... rest... period mandated pursuant to... an applicable... order of the Industrial Welfare Commission.

(c) If an employee fails to provide an employee a... rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the... rest period is not provided.

26. Section 12 of Wage Order 5-2001 provides, in pertinent part:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

27. As set forth herein, Defendants failed to authorize and permit Plaintiffs and putative Class Members to take paid 10-minute third rest periods on shifts over ten hours and failed to pay them rest period premiums in lieu thereof, in violation of Labor Code section 226.7 and Section 12 of Wage Order 5-2001.

28. As a result of these failures, Plaintiffs and putative Class Members have suffered damages in amounts subject to proof, for which they seek relief in the form of unpaid rest period premiums, pre-judgment interest, attorney's fees pursuant to Code of Civil Procedure section 1021.5 and Labor Code section 218.5, and costs.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code § 226)
(On Behalf of Plaintiffs and the Wage Statement Subclass Against Each Defendant)

29. Plaintiffs incorporate and re-allege the preceding paragraphs.

30. Labor Code section 226 provides, in pertinent part:

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of their social security number or an employee identification number other than a

1 social security number, (8) the name and address of the legal entity that is
2 the employer and, if the employer is a farm labor contractor, as defined in
3 subdivision (b) of Section 1682, the name and address of the legal entity
4 that secured the services of the employer, and (9) all applicable hourly
5 rates in effect during the pay period and the corresponding number of
6 hours worked at each hourly rate by the employee and, beginning July 1,
2013, if the employer is a temporary services employer as defined
in Section 201.3, the rate of pay and the total hours worked for each
temporary services assignment.

(e)(1) An employee suffering injury as a result of a knowing and
intentional failure by an employer to comply with subdivision (a) is
entitled to recover the greater of all actual damages or fifty dollars (\$50)
for the initial pay period in which a violation occurs and one hundred
dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
is entitled to an award of costs and reasonable attorney's fees.

31. As set forth herein, Defendants failed to provide accurate, itemized wage
statements to Plaintiffs and the putative Class, by failing to include in wage statements rest
period premiums earned but unpaid, in violation of Labor Code section 226(a).

32. As a result of this failure, Plaintiffs and Wage Statement Subclass Members are
entitled to recover damages in amounts subject to proof or penalties not to exceed \$4,000 per
employee, plus attorneys' fees, costs, and pre-judgment interest, under Labor Code section
226(e)(1).

THIRD CAUSE OF ACTION
VIOLATIONS OF THE UNFAIR COMPETITION LAW ("UCL")
(California Business and Professions Code §§ 17200, *et seq.*)
(On Behalf of Plaintiffs and the UCL Subclass Against Each Defendant)

33. Plaintiffs incorporate and re-allege the preceding paragraphs.

34. Defendants' failure to pay rest period premiums constitutes an unlawful and
unfair business practice within the meaning of Business and Professions Code sections 17200,
et seq. This failure was unlawful because by their failure, Defendants violated the California
Labor Code and IWC Wage Order 5-2001; this failure was unfair because it deprived Plaintiffs
and the putative Class of: knowledge that they were entitled to third rest periods on shifts over
10 hours; third rest periods themselves; and premiums in lieu of the rest periods not provided.

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1 35. This cause of action is brought under Business and Professions Code sections
2 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action
3 and pursuant to Business and Professions Code section 17208, Plaintiffs and members of the
4 proposed UCL Subclass seek restitution of rest period premiums, where such premiums were
5 due during the Class Period, according to proof.

6 36. This cause of action is brought as a cumulative remedy as provided in Business
7 and Professions Code section 17205, and is intended as an alternative remedy for restitution for
8 Plaintiffs and the “Third Rest Period Subclass,” for any portion of time commencing within
9 three (3) years before filing this complaint, and as the primary remedy for Plaintiffs and the
10 Third Rest Period Subclass for any portion of time during the *fourth year* before filing this
11 Complaint. This recovery is owed until (1) Defendants cease their unlawful business practice,
12 (2) the commencement of trial, and/or (3) a date otherwise determined by the Court pursuant
13 California law.

14 37. Plaintiffs, individually and on behalf of the proposed UCL Subclass, request
15 other equitable relief be provided, as this court deems proper, including an order requiring
16 Defendants to make tax contributions on the accrued wages in the form of FICA, Social
17 Security, Medicare, Unemployment Insurance, or other appropriate payments. Defendants’
18 business practice undermined competition and was done to avoid costs other lawful employers
19 comply with in order to avoid payment of full compensation owed.

20 38. Plaintiffs, and the UCL Subclass they seek to represent, request restitution owed,
21 in an amount according to proof, interest, attorney’s fees pursuant to Code of Civil Procedure
22 section 1021.5, and costs.

23 **FOURTH CAUSE OF ACTION**
24 **FAILURE TO AUTHORIZE AND PERMIT THIRD REST PERIODS UNDER PAGA**
 (Cal. Labor Code §§ 2698, *et seq.*)
25 **(On behalf of Plaintiffs and All Aggrieved Employees)**

26 39. Plaintiffs incorporate and re-allege the preceding paragraphs.

27 40. Labor Code sections 2699(a) and 2699(f) provide civil penalties for violations of
28 the labor code, to be recovered through a civil action brought by an aggrieved employee on

1 behalf of himself or herself and other current or former employees pursuant to the procedures
2 specified in Section 2699.3.

3 41. As set forth herein, Defendants failed to authorize and permit Plaintiffs and
4 other aggrieved employees to take paid 10-minute third rest periods on shifts over ten hours
5 and failed to pay them rest period premiums in lieu thereof, in violation of Labor Code section
6 226.7.

7 42. As a result, Plaintiffs are entitled to, and seek to, recover, civil penalties
8 pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney's
9 fees, and costs. Civil penalties recovered will be distributed in accordance with the PAGA, with
10 75% sent to the LWDA on behalf of the State of California.

11 **FIFTH CAUSE OF ACTION**
12 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS UNDER**
13 **PAGA**

14 **(Cal. Labor Code §§ 2698, *et seq.*)**
15 **(On behalf of Plaintiffs and All Aggrieved Employees)**

16 43. Plaintiffs incorporate and re-allege the preceding paragraphs.

17 44. As set forth herein, Defendants failed to provide accurate, itemized wage
18 statements to Plaintiffs and other aggrieved employees, by failing to include in wage statements
19 rest period premiums earned but unpaid, in violation of Labor Code section 226(a).

20 45. As a result, Plaintiffs are entitled to, and seek to, recover, civil penalties
21 pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney's
22 fees, and costs. Civil penalties recovered will be distributed in accordance with the PAGA, with
23 75% sent to the LWDA on behalf of the State of California.

24 **SIXTH CAUSE OF ACTION**
25 **FAILURE TO TIMELY PAY FINAL WAGES UNDER PAGA**

26 **(Cal. Labor Code §§ 2698, *et seq.*)**
27 **(On behalf of Plaintiffs and All Aggrieved Employees)**

28 46. Plaintiffs incorporate and re-allege the preceding paragraphs.

47. Generally, employers must pay wages earned and unpaid to discharged
employees within 72 hours, and to quitting employees immediately. Labor Code §§ 201(a),
202(a). If an employer willfully fails to pay these wages to "an employee who is discharged or

1 who quits, the wages of the employee shall continue as a penalty from the due date thereof at
2 the same rate until paid or until an action therefor is commenced; but the wages shall not
3 continue for more than 30 days.” Labor Code § 203(a).

4 48. Defendants failed to pay rest period premium wages owed to separated
5 aggrieved employees within the times required by Labor Code sections 201(a) and 202(a), and
6 did not pay waiting time penalties under Labor Code section 203(a).

7 49. As a result, Plaintiffs are entitled to, and seek to, recover, civil penalties
8 pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney’s
9 fees, and costs. Civil penalties recovered will be distributed in accordance with the PAGA, with
10 75% sent to the LWDA on behalf of the State of California.

11 **VII.**

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs CHARLANA BOEGGEMAN and BENJAMIN RICKS,
14 individually and on behalf of all others similarly situated and aggrieved, pray for judgment as
15 follows:

16 a. For certification of this action as a class action pursuant to Code of Civil
17 Procedure section 382;

18 b. For appointment of Plaintiffs as Class and Subclass Representatives;

19 c. For appointment of Plaintiffs’ Counsel as Class Counsel;

20 d. That this action be maintained as a PAGA representative action, and that
21 Plaintiffs and their counsel be provided with all enforcement capability as if the action were
22 brought by the California Division of Labor Standards Enforcement;

23 e. For an order bifurcating the action into liability and damages stages;

24 f. On the First Cause of Action, for unpaid rest period premiums, pre-judgment
25 interest, attorneys’ fees pursuant to Code of Civil Procedure section 1021.5 and Labor Code
26 section 218.5, costs, and pre-judgment interest;

27 g. On the Second Cause of Action, for statutory damages according to proof or
28 penalties up to a maximum of \$4,000 per Wage Statement Subclass Member, attorneys’ fees

pursuant to Code of Civil Procedure section 1021.5 and Labor Code section 218.5, costs, and pre-judgment interest;

h. On the Third Cause of Action, for the UCL Subclass, to recover all restitution for rest period premiums not paid to UCL Subclass Members during the Class Period as a result of Defendants' conduct, plus interest, attorney's fees pursuant to Code of Civil Procedure section 1021.5, costs, and pre-judgment interest;

i. On the Fourth Cause of Action, to recover civil penalties pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, and costs.

j. On the Fifth Cause of Action, to recover civil penalties pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, and costs.

k. On the Sixth Cause of Action, to recover civil penalties pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, and costs.

l. For pre-judgment and post-judgment interest, to the extent permitted by law on all causes of action; and

m. Such other equitable relief as this Court deems necessary and proper.

COHELAN KHOURY & SINGER

Dated: May 14, 2024

By: 

Michael D. Singer

Isam C. Khoury

Maggie K. Realin

Rosemary C. Khoury

Counsel for Plaintiffs CHARLANA BOEGGEMAN and BENJAMIN RICKS, individually and on behalf of all others similarly situated and aggrieved

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VIII.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER

Dated: May 14, 2024

By:



Michael D. Singer

Isam C. Khoury

Maggie K. Realin

Rosemary C. Khoury

Counsel for Plaintiffs CHARLANA BOEGGEMAN and
BENJAMIN RICKS, individually and on behalf of
all others similarly situated and aggrieved