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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

BERTHA GOMEZ PEREZ, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

COUNTY OF SAN JOAQUIN; SAN
JOAQUIN HEALTH CENTERS; and
DOES 1 through 10, Inclusive,

Defendants.

Case No. STK-CV-UOE-2024-0007209

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

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 Meal Periods
6. PAGA Civil Penalties for Failure to Provide Rest Periods

DEMAND FOR JURY TRIAL

1 Plaintiff BERTHA GOMEZ PEREZ (“Plaintiff”), on behalf of herself and all others
2 similarly situated, and as a Representative of the State of California’s Labor and Workforce
3 Development Agency (“LWDA”), alleges:

4 **INTRODUCTION**

5 1. This is a class action against the COUNTY OF SAN JOAQUIN, SAN
6 JOAQUIN HEALTH CENTERS, and Does 1-10 (“Defendants”). Plaintiff brings this action on
7 behalf of herself and all Defendants’ non-exempt employees subject to Defendants’ policies of
8 suffering or permitting uncompensated work by, among other reasons, paying employees based
9 on rounded time, rather than actual time under their control, automatically deducting 30
10 minutes of time in shifts of five hours or more, whether a meal period was provided or not, and
11 not providing rest periods, starting four years before this action was filed (“Class Period”).

12 2. Plaintiff also brings this Representative Action under the Private Attorneys
13 General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of herself and all
14 other aggrieved employees employed by Defendants in the State of California, for civil
15 penalties pursuant to the PAGA for Defendants’ failure to: pay all wages due; provide duty-
16 free, uninterrupted meal periods or premium wages in lieu thereof; and provide duty-free,
17 uninterrupted rest periods or premium wages in lieu thereof.

18 3. Plaintiff gave written notice of these claims to the California Labor and
19 Workforce Development Agency (“LWDA”) on May 10, 2024 pursuant to Labor Code section
20 2699.3, and there has been no LWDA intervention within 65 days of this notice. Plaintiff seeks
21 civil penalties under the PAGA as a representative of the State of California and has standing as
22 an aggrieved employee. Plaintiff seeks to represent all Defendants’ non-exempt employees in
23 the State of California who suffered one or more of the violations alleged (“aggrieved
24 employees”) during the “PAGA Period” (one year plus 65 days prior to the date of the filing of
25 this complaint until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

26 **JURISDICTION AND VENUE**

27 4. Venue as to each Defendant is proper in this judicial district. Code of Civil
28 Procedure, section 395. Defendants conduct business in San Joaquin County and are within the

1 Court's jurisdiction for service of process. The unlawful acts alleged have a direct effect on
2 Plaintiff and those similarly situated within San Joaquin County. Individual Class Member
3 claims are under the \$75,000 jurisdictional threshold for federal jurisdiction.

4 5. Further, as a representative action under the PAGA, the matter is not subject to
5 removal under 28 U.S.C. §§ 1332(a)-(d). PAGA civil penalty actions are not subject to federal
6 jurisdiction.

7 **THE PARTIES**

8 6. BERTHA GOMEZ PEREZ worked as an hourly-paid Medical Assistant for
9 Defendants in San Joaquin, California, starting in approximately August 2023. Plaintiff worked
10 at San Joaquin General Hospital in French Camp, until her employment was terminated on
11 February 26, 2024.

12 7. The COUNTY OF SAN JOAQUIN is a California public entity, duly organized
13 under the laws of the State of California.

14 8. SAN JOAQUIN HEALTH CENTERS ("SJ Health") is a primary care provider
15 operating in California and serving thousands of patients throughout San Joaquin County. SJ
16 Health operates San Joaquin General Hospital, its principal place of business is in San Joaquin
17 County, and it employs numerous Class Members in San Joaquin County.

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

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

26 **GENERAL ALLEGATIONS**

27 11. Plaintiff re-alleges all preceding paragraphs as though fully set forth herein.

28 12. During all, or a part, of the Class and PAGA Periods, Plaintiff, Class Members,

1 and aggrieved employees were employed by Defendants in the State of California, including in
2 the County of San Joaquin.

3 13. Notwithstanding any agreement to work for a lesser wage, an employee
4 receiving less than legal minimum wage for any time under an employer's control may recover
5 the full amount of those wages, including interest, reasonable attorneys' fees, and costs of suit,
6 and liquidated damages equal to unpaid wages and interest when an employer fails to pay the
7 minimum wage fixed by statute or commission order. Labor Code §§ 1194, 1194.2.

8 14. Plaintiff, Class Members, and aggrieved employees were non-exempt employees
9 covered under one or more Industrial Welfare Commission Wage Orders ("Wage Orders"), and
10 Labor Code sections 1194, 1194.2, 1197, 1197.1, and other applicable orders, regulations, and
11 statutes, and each Class Member or aggrieved employee was not subject to executive,
12 administrative, professional, or other exemptions, and Defendants are obligated to pay Plaintiff,
13 Class Members, and aggrieved employees all lawful wages.

14 15. Plaintiff, Patient Care Subclass Members, and aggrieved employees were non-
15 exempt employees covered under one or more Wage Orders, and Labor Code section 512.1,
16 and Defendants were obligated to provide Patient Care Subclass Members and aggrieved
17 employees compliant rest and rest and meal periods and an hour of pay at regular rates for each
18 workday a meal or rest period was not provided.

19 16. During all, or a part of, the Class and PAGA Periods, Defendants maintained
20 policies which failed to pay Plaintiff, Class Members, and aggrieved employees at least
21 minimum wages for all hours worked, including by paying based on rounded time (shift time),
22 rather than actual time worked.

23 17. During the Class and PAGA Periods, Plaintiff and Class Members were required
24 to, and did, clock in and out for each shift, but Defendants rounded these time entries, reducing
25 the number of hours Plaintiff, Class Members, and aggrieved employees were paid wages for.

26 18. During the Class and PAGA Periods, Defendants automatically deducted at least
27 30 minutes during each shift of five hours or more from Class Members and aggrieved
28 employees, whether compliant meal periods were provided or not.

1 19. During the Class and PAGA Periods, Defendants did not pay Class Members
2 and aggrieved employees an hour of pay at regular rate for each workday a meal or rest period
3 was not provided.

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

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

Defendants and provide all available relief to all Class Members in a single action, including injunctive relief.

GOVERNMENT CLAIMS ACT REQUIREMENTS

22. On May 10, 2024, Plaintiff filed a claim against Defendant County of San Joaquin pursuant to Government Code section 910, on behalf of herself, the Class Members, and aggrieved employees. On May 23, 2024, Defendant County of San Joaquin rejected Plaintiff's claim.

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 Subclass are ascertainable and can be identified and located by Defendants' 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 Defendants' 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 Defendants' common

1 course of conduct in violation of laws, regulations, and statutes as alleged.

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

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

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

15 a. Whether Defendants compensated Class Members for all hours worked or
16 under their control by paying based on rounded, rather than actual time;

17 b. Whether Defendants compensated Class Members for all hours worked or
18 under their control by automatically deducting time for meal periods;

19 c. Whether Defendants provided all meal and rest periods to Patient Care
20 Subclass Members; and

21 d. Whether Defendants provided Patient Care Subclass Members with one
22 hour of pay at the regular rate of pay each workday it did not authorize and permit a rest period
23 or provide a meal period.

24 **CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**

26 **Failure to Pay All Wages**
27 **(By Plaintiff and the Class against each Defendant)**

28 34. Plaintiff re-alleges all preceding paragraphs.

35. By failing to pay all wages for hours Plaintiff and Class Members were under

1 their control, including by rounding time downward to their detriment, and automatically
2 deducting time for meals not provided, Defendants failed to pay all earned wages and violated
3 laws and regulations having the force of law, including Labor Code sections 1194, 1197,
4 1197.1, IWC Wage Orders, and local minimum wage ordinances.

5 36. Defendants' unlawful acts deprived Plaintiff and Class Members of wages in
6 amounts to be determined at trial, and they are entitled to recover these amounts, with
7 liquidated damages for unpaid minimum wages, and interest, attorneys' fees, and costs.

8 **SECOND CAUSE OF ACTION**

9 **Failure to Provide All Meal Periods**

10 **(By Plaintiff and Patient Care Subclass against each Defendant)**

11 37. Plaintiff re-alleges all preceding paragraphs.

12 38. By failing to provide duty-free meal periods of at least thirty (30) minutes for
13 shifts of five hours or more, starting before the end of the fifth hour of work, and failing to pay
14 Plaintiff and Patient Care Subclass Members one hour of pay at their regular rate for each day a
15 meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and
16 512.1, and IWC Wage Orders.

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

20 **THIRD CAUSE OF ACTION**

21 **Failure to Provide All Rest Periods**

22 **(By Plaintiff and Patient Care Subclass against each Defendant)**

23 40. Plaintiff re-alleges all preceding paragraphs.

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

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42. Defendants' 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 Aggrieved Employees Against Each Defendant)

43. Plaintiff re-alleges all preceding paragraphs.

44. "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Labor Code § 1194(a).

45. "[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." Labor Code § 2699(a).

46. "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." Labor Code § 2699(f)(2).

47. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

48. By failing to pay all wages for hours Plaintiff and aggrieved employees were under their control, including by rounding time downward to their detriment, and automatically deducting time for meals not provided, Defendants failed to pay all earned wages during the

1 PAGA Period.

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

6 **FIFTH CAUSE OF ACTION**

7 **PAGA Civil Penalties for Failure to Provide All Meal Periods**
8 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

9 50. Plaintiff re-alleges all preceding paragraphs.

10 51. By failing to provide duty-free meal periods of at least thirty (30) minutes for
11 shifts of five hours or more, starting before the end of the fifth hour of work, Defendants
12 willfully violated Labor Code sections 226.7 and 512 and the applicable Wage Order(s).

13 52. By failing to pay aggrieved employees one hour of pay at their regular rate of
14 compensation for each workday a meal period was not provided, Defendants willfully violated
15 Labor Code sections 226.7 and 512, and the applicable Wage Order(s).

16 53. During the PAGA Period, Defendants failed to provide compliant meal periods.

17 54. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
18 underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered
19 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to
20 the LWDA on behalf of the State of California. The amount of the applicable penalty will be
21 proven at trial.

22 **SIXTH CAUSE OF ACTION**

23 **PAGA Civil Penalties for Failure to Provide All Rest Periods**
24 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

25 55. Plaintiff re-alleges all preceding paragraphs.

26 56. By failing to authorize and permit a rest period of at least 10 minutes for every
27 four (4) hours or major fraction thereof worked per day, Defendants willfully violated
28 provisions of Labor Code section 226.7 and the applicable Wage Order(s).

57. By failing to pay employees one hour of pay at their regular rate of
compensation for each day a compliant rest period was not authorized and permitted,

Defendants willfully violated the provisions of Labor Code section 226.7 and the applicable Wage Order(s).

58. During the PAGA Period, Defendants failed to provide rest periods.

59. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, 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.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

A. For certification of this action as a class action;

B. For appointment of Plaintiff as the representative of the Class and Subclass;

C. For appointment of counsel for Plaintiff as Class Counsel;

D. For injunctive relief;

E. For compensatory damages in an amount according to proof;

F. For all interest accrued to date;

G. That this action be maintained as a PAGA Representative Action, and Plaintiff and her counsel be provided with enforcement capability as if the action were brought by the DLSE;

H. For recovery of all civil penalties as permitted by Labor Code section 2699, for unpaid minimum, regular, and overtime wages owed pursuant to Labor Code section 1194, according to proof;

I. For recovery of civil penalties as permitted by Labor Code section 2699, for unpaid meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

J. For recovery of civil penalties as permitted by Labor Code section 2699 for unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

K. For all civil penalties to be distributed 75% to the LWDA and 25% to the

1 aggrieved employees, subject to approval by the Court, pursuant to Labor Code section 2699(i);

2 L. For the Plaintiff to be recognized by the Court as serving as a Representative of
3 the LWDA, that she be deemed an “aggrieved employee,” and that she be awarded some form
4 of enhanced compensation for bringing this action should she prevail and provide benefit to the
5 State of California or other “aggrieved employees,” subject to the Court’s discretion;

6 M. For reasonable attorneys’ fees and costs; and

7 N. For such other relief the Court deems just and proper.

8 COHELAN KHOURY & SINGER
9 MAJARIAN LAW GROUP, APC

10 Dated: July 16, 2024

By: 

Marta Manus, Esq.

11 Attorneys for Plaintiff Bertha Gomez Perez, on behalf of
12 herself and all others similarly situated and aggrieved

13 **DEMAND FOR JURY TRIAL**

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

15 COHELAN KHOURY & SINGER
16 MAJARIAN LAW GROUP, APC

17 Dated: July 16, 2024

By: 

Marta Manus, Esq.

18 Attorneys for Plaintiff Bertha Gomez Perez, on behalf of
19 herself and all others similarly situated and aggrieved
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