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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

CHRISTOPHER SANCHEZ, as an individual
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

FRESNO SURGERY CENTER, L.P., dba
Fresno Surgical Hospital, a California Limited
Partnership; USP SACRAMENTO, INC., a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 24CV016921

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Christopher Sanchez (“Plaintiff”), on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Fresno Surgery Center,
3 L.P., dba Fresno Surgical Hospital, a California Limited Partnership; USP Sacramento, Inc., a
4 California Corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), and on
5 information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
8 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
9 *seq.*

10 2. This Court has jurisdiction over Defendants because, upon information and belief,
11 Defendants are citizens of California, Defendants have sufficient minimum contacts in
12 California, or otherwise intentionally avail themselves to the California market so as to render
13 the exercise of jurisdiction over them by the California courts consistent with the traditional
14 notions of fair play and substantial justice.

15 **VENUE**

16 3. Venue as to each Defendant is proper in this judicial district pursuant to California
17 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
18 complained of herein occurred in the County of Sacramento. Further, at all times relevant herein
19 Plaintiff was employed by Defendants within the County of Sacramento.

20 **PARTIES**

21 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the one year immediately preceding
23 Plaintiff’s giving of the required notice under the PAGA, and within the statute of limitations
24 periods applicable to the cause of action pled herein, Plaintiff was employed by Defendants as an
25 hourly non-exempt employee.

26 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
27 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
28 present, Defendants did (and do) business by owning and operating facilities that provide a range

1 of specialized health care services, including surgical and outpatient care, and employed Plaintiff
2 and other similarly-situated hourly non-exempt employees within the State of California and,
3 therefore, were (and are) doing business in the State of California.

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were licensed to do business in California, and were the employers of Plaintiff
6 and the Aggrieved Employees (as defined in Paragraph 17).

7 7. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Representative Action Complaint when such true names and capacities are
11 discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious
12 defendants, whether individual, partners, or corporate, were responsible in some manner for the
13 acts and omissions alleged herein, and proximately caused Plaintiff and the Aggrieved
14 Employees (as defined in Paragraph 17) to be subject to the unlawful employment practices,
15 wrongs, injuries, and damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
18 defined in Paragraph 17).

19 9. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one
22 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

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

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
2 Aggrieved Employees (as defined in Paragraph 17).

3 **REPRESENTATIVE ACTION ALLEGATIONS**

4 11. Defendants own and operate hospitals that specialize in surgical and post-
5 operative care. Plaintiff worked for Defendants as a non-exempt employee in the positions of
6 “Housekeeper” from approximately June 2023 through approximately July 2023. The
7 “aggrieved employees” whom Plaintiff seeks to represent are all current and former non-exempt
8 employees of Defendants who performed work for Defendants in the State of California during
9 the one year immediately preceding the date of this letter through the present.

10 12. During Plaintiff’s employment with Defendants, Plaintiff often worked in excess
11 of 8.0 hours per workday and/or in excess of 40.0 hours per workweek. However, even when
12 Defendants did pay Plaintiff overtime pay, they did not pay overtime compensation equal to one
13 and one-half times his “regular rate” of pay for working overtime hours. Specifically, Plaintiff
14 received non-discretionary incentive pay, including but not limited to payments denoted as “2nd
15 Shift Diff” and/or other forms of pay that are not excludable from the “regular rate” of pay as a
16 matter of law (hereinafter the aforementioned forms of pay are collectively referred to as
17 “Incentive Pay”). Defendants failed to accurately calculate Plaintiff’s and other aggrieved
18 employees’ regular rate of pay as a result of receiving Incentive Pay, as Plaintiff and other
19 aggrieved employees were only paid one-and-a-half times their base rate of pay, thereby causing
20 Plaintiff and other aggrieved employees to be underpaid all of their required overtime wages.

21 13. Defendants failed to provide Plaintiff and other aggrieved employees with all
22 legally compliant meal periods due to Defendants’ meal period policies/practices, which resulted
23 in late (commencing after the fifth hour of work), short (less than 30 minutes), and missed meal
24 periods. On those occasions when Plaintiff was not provided with all the legally required meal
25 periods to which he was entitled, Defendants did not always compensate Plaintiff with the
26 required meal period premium for each workday in which he experienced a meal period violation
27 as mandated by Labor Code § 226.7. Furthermore, upon information and belief, when
28 Defendants did pay Plaintiff and other aggrieved employees a meal period premium, Defendants

1 paid the meal period premiums at the employee's base hourly rate of pay, despite the fact that
2 Plaintiff's and other aggrieved employees' regular rates of pay were higher than their base rates
3 of pay due to their receipt of Incentive Pay. *See Ferra v. Loews Hollywood Hotel, LLC*, 11
4 Cal.5th 858, 785-86 (2021) (holding "regular rate of compensation" in Labor Code § 226.7 to be
5 synonymous with "regular rate of pay" in Labor Code § 510, and therefore meal and rest period
6 premiums must incorporate incentive pay just like overtime premiums).

7 14. Defendants' rest period policies/practices also failed to authorize and permit
8 Plaintiff and other aggrieved employees all off-duty rest periods to which they were entitled.
9 Specifically, Defendants required Plaintiff and other aggrieved employees to forgo their rest
10 periods by assigning them time-sensitive tasks that could not be interrupted and resumed once
11 started. Defendants also failed to authorize and permit a net 10-minute rest period in an area
12 appropriate for rest away from the workstation for every four hours worked or a major fraction
13 thereof due to Defendants' rest period policies/practices. Because of the distance between the
14 breakroom and work areas, Plaintiff would have to end his rest break several minutes before the
15 required period in order to return to work and avoid disciplinary action. Thus, Plaintiff was
16 unable to ever take 10 minutes of "net rest" in an area appropriate for rest away from the
17 workstation. On those occasions where Plaintiff was not provided with all legally compliant rest
18 periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest
19 period premium for each workday in which he experienced a rest period violation as mandated
20 by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant
21 time period, Defendants maintained no payroll code or other mechanism for the payment of rest
22 period premium wages under Labor Code § 226.7 in the event that a legally compliant rest period
23 was not provided to their non-exempt employees.

24 15. Defendants also failed to adequately reimburse Plaintiff and other aggrieved
25 employees for all reasonable and necessary work expenditures, including, but not limited to, the
26 use of their personal cellular phones to communicate with co-workers and management. Despite
27 requiring Plaintiff and other aggrieved employees to use their personal cellular phones for work-
28 related purposes, Defendants did not reimburse Plaintiff and other employees for their cellular

1 phone expenses.

2 16. As a result of Defendants' failure to pay all earned overtime wages, and failure to
3 pay all meal and rest period premium wages, Defendants maintained inaccurate payroll records,
4 issued inaccurate wage statements to Plaintiff, and failed to pay Plaintiff all wages owed at the
5 time of his separation of employment with Defendants.

6 17. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved
7 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
8 violations discussed herein.

9 **FIRST CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **(AGAINST ALL DEFENDANTS)**

12 18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
13 fully set forth herein.

14 19. Defendants have committed several Labor Code violations against Plaintiff and
15 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
16 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
17 representative action against Defendants to recover the civil penalties due to Plaintiff, other
18 aggrieved employees, and the State of California according to proof, including, but not limited
19 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
20 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
21 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
22 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
23 employee per pay period; (3) \$250.00 for each initial violation; and \$1,000.00 for each subsequent
24 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) \$100.00 for
25 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
26 those violations of the Labor Code for which no civil penalty is specifically provided, based on
27 the following Labor Code violations:

28 a. Failing to pay Plaintiff and other aggrieved employees all earned overtime

1 compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

2 b. Failing to authorize and permit all required rest periods and failing to pay rest
3 period premiums to Plaintiff and other aggrieved employees at these employees'
4 respective regular rates of compensation for rest period violations in violation of
5 Labor Code §§ 226.7, 516, and 558;

6 c. Failing to provide meal periods as required by law and failing to pay meal period
7 premiums to Plaintiff and other aggrieved employees at these employees'
8 respective regular rates of compensation for meal period violations in violation
9 of Labor Code §§ 226.7, 512, and 558;

10 d. Failing to reimburse Plaintiff and other aggrieved employees for necessary
11 expenditures incurred in violation of Labor Code §§ 2802 and 2804;

12 e. Failing to furnish Plaintiff and other aggrieved employees with accurate and
13 compliant itemized wage statements in violation of Labor Code § 226 *et seq.*;

14 f. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees
15 in violation of Labor Code §§ 201, 202, and 203;

16 g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
17 twice during each calendar month in violation of Labor Code § 204; and

18 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
19 employees in violation of Labor Code §§ 1174 and 1198.

20 20. On June 21, 2024, Plaintiff notified Defendants Fresno Surgery Center, L.P., dba
21 Fresno Surgical Hospital, and USP Sacramento, Inc., via certified mail, and the California Labor
22 and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the
23 California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California
24 Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in
25 Paragraph 19 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants
26 of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim
27 under the Private Attorneys General Act with respect to these violations.

28 21. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and the interests of other aggrieved employees, and to assess and collect the
2 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
3 he is entitled to receive under California Labor Code § 2699.

4 **PRAYER**

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

7 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
8 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
9 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
10 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
11 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
12 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
13 pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial violation
14 and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per
15 pay period; and/or (4) \$100.00 for each initial violation and \$200 for each subsequent violation
16 per employee per pay period for those violations of the Labor Code for which no civil penalty is
17 specifically provided, based on the Labor Code violations identified in Paragraph 19 (a)-(h);

18 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
19 2699(g) and Code of Civil Procedure § 1021.5; and

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

21
22 Dated: August 26, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

23
24 By:



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Attorneys for Plaintiff