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14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF SAN DIEGO**

16 **ESMERALDA ELIA**, on behalf of the  
17 State of California, as a private attorney  
18 general,

19 **Plaintiff,**

20 vs.

21 **RADY CHILDREN'S HOSPITAL-SAN**  
22 **DIEGO**, a California Corporation; and  
23 **DOES 1 through 50**, inclusive,

24 **Defendants.**

Case No. 24CU020488C

**REPRESENTATIVE ACTION COMPLAINT**  
**FOR:**

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

ELECTRONICALLY FILED  
Superior Court of California,  
County of San Diego

11/1/2024 11:15:25 AM

Clerk of the Superior Court  
By B. Montijo ,Deputy Clerk

1 Plaintiff Esmeralda Elia (“PLAINTIFF”), on behalf of the people of the State of  
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor  
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on  
4 information and belief, except for her own acts and knowledge which are based on personal  
5 knowledge, the following:

### 6 INTRODUCTION

7 1. PLAINTIFF brings this action against defendant Rady Children’s Hospital-San  
8 Diego (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties on behalf  
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF  
10 does **not seek to recover anything other than penalties as permitted by California Labor**  
11 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,  
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but  
13 simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA which permits PLAINTIFF to bring an action  
15 on behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and  
16 sole nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for  
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that  
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this  
20 complaint should be construed as attempting to obtain any relief that would not be available in  
21 a PAGA-only action.

22 4. PLAINTIFF is not suing in her individual capacity; she is proceeding  
23 herein solely under the PAGA, on behalf of the State of California for all aggrieved employees,  
24 including herself and other aggrieved employees. Nothing in this complaint should be  
25 construed as PLAINTIFF suing in her individual capacity.

1 **THE PARTIES**

2 5. Rady Children's Hospital-San Diego ("DEFENDANT") is a corporation that  
3 conducts regular and substantial business in the State of California. DEFENDANT operates  
4 a hospital in San Diego County.

5 6. PLAINTIFF was employed by DEFENDANT in California as a Clinical Research  
6 Coordinator ("CRC") from September 11, 2023 to May 15, 2024. At all times relevant during  
7 PLAINTIFF's employment with DEFENDANT, PLAINTIFF was classified as a salaried  
8 employee exempt from overtime wages and other related benefits.

9 7. The position of a Clinical Research Coordinator was represented by  
10 DEFENDANT to PLAINTIFF and the other Clinical Research Coordinators as an exempt and  
11 a salaried position.

12 8. To successfully compete against the other hospitals and healthcare companies  
13 DEFENDANT substantially reduced its labor costs by placing the labor burden on a smaller  
14 number of employees. The goal of overtime laws includes expanding employment throughout  
15 the workforce by putting financial pressure on the employer and nurturing a stout job market,  
16 as well as the important public policy goal of protecting employees in a relatively weak  
17 bargaining position against the unfair scheme of uncompensated overtime work. An employer's  
18 obligation to pay its employees wages is more than a matter of private concern between the  
19 parties. That obligation is founded on a compelling public policy judgment that employees are  
20 entitled to work a livable number of hours at a livable wage. In addition, statutes and  
21 regulations that compel employers to pay overtime relate to fundamental issues of social welfare  
22 worthy of protection. The requirement to pay overtime wages extends beyond the benefits  
23 individual workers receive because overtime wages discourage employers from concentrating  
24 work in a few overburdened hands and encourage employers to instead hire additional  
25 employees. Especially in today's economic climate, the importance of spreading available work  
26 to reduce unemployment cannot be overestimated.

27 9. The employees employed in the position with DEFENDANT as Clinical Research  
28 Coordinator all performed the same primary job duty which was to provide the core day-to-day

1 routine activities of DEFENDANT's business. PLAINTIFF and other Clinical Research  
2 Coordinators performed the finite set of tasks of conducting intake evaluations using a checklist  
3 provided by DEFENDANT, coordinating IRB applications, entering data obtained from the  
4 clinical trials into electronic case report forms, completing checklists provided by  
5 DEFENDANT which included quality checking documents and notifying doctors of the next  
6 day's procedures, and acting as information liaisons between DEFENDANT and  
7 DEFENDANT's clients all in accordance with DEFENDANT's business policies and practices  
8 Clinical Research Coordinators performed all of their job functions according to established  
9 company policies, protocols and procedures. According to DEFENDANT's company policy,  
10 while performing the job functions of a Clinical Research Coordinator, the Clinical Research  
11 Coordinators were and are required from time to time to work in excess of eight (8) hours each  
12 workday and more than forty (40) hours each workweek. PLAINTIFF and the other Clinical  
13 Research Coordinators primarily performed the overwhelmingly routine day-to-day duties  
14 described above and as such their work was not directly related to the management policies or  
15 general business operations of DEFENDANT.

16 10. Given the circumstances of the job functions performed by the PLAINTIFF and  
17 the other Clinical Research Coordinators, PLAINTIFF and other Clinical Research Coordinators  
18 did not primarily perform office or non-manual work directly related to policymaking and/or  
19 the general business operations of DEFENDANT. The work of the PLAINTIFF and the other  
20 Clinical Research Coordinators did not require special training, experience and/or knowledge  
21 and also did not involve the use of discretion and independent judgment with respect to matters  
22 of significance of the enterprise. Instead, PLAINTIFF and the other Clinical Research  
23 Coordinators primary job duty was and is performing day-to-day routine and mundane data  
24 entry and following established checklists provided to them by DEFENDANT. PLAINTIFF  
25 and the other Clinical Research Coordinators , are non-exempt employees and are entitled to  
26 overtime compensation. Therefore, PLAINTIFF, and all the other Clinical Research  
27 Coordinators should have been properly classified as non-exempt employees.

28 11. For DEFENDANT's business, the PLAINTIFF and other Clinical Research

1 Coordinators functioned as working members for DEFENDANT. As defined by  
2 DEFENDANT's comprehensive corporate policies and procedures, the primary job duty of the  
3 AGGRIEVED EMPLOYEES employed by DEFENDANT was and is to perform day-to-day  
4 routine and mundane data entry and filling out checklists in accordance with DEFENDANT's  
5 established specific protocols and procedures which govern and control every important aspect  
6 of the work performed by the Clinical Research Coordinators . These standardized procedures  
7 mirror the realities of the workplace evidencing a uniformity of work among the Clinical  
8 Research Coordinators and negated any exercise of independent judgment and discretion as to  
9 any matter of significance.

10 12. The work schedule for the Clinical Research Coordinators was set by  
11 DEFENDANT. From time to time PLAINTIFF and other Clinical Research Coordinators work  
12 in excess of eight (8) hours in a workday and more than forty (40) hours in a workweek.

13 13. PLAINTIFF and the other Clinical Research Coordinators members were not  
14 provided overtime compensation and other benefits required by law as a result of being  
15 classified as "exempt" by DEFENDANT.

16 14. PLAINTIFF, and such persons that may be added from time to time who satisfy  
17 the requirements and exhaust the administrative procedures under the Private Attorney General  
18 Act, brings this Representative Action on behalf of the State of California with respect to herself  
19 and all individuals who are or previously were employed by DEFENDANT in California,  
20 including any employees staffed with DEFENDANT by a third party, as Clinical Research  
21 Coordinators and classified as exempt employees ("AGGRIEVED EMPLOYEES") during the  
22 time period of July 16, 2023 until a date as determined by the Court (the "PAGA PERIOD").

23 15. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently  
24 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative  
25 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's  
26 violation of California Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3,  
27 246, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8, Section  
28 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14)

1 (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing,  
2 PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning  
3 of Labor Code § 2699, *et seq.*

4 16. As a matter of company policy, practice, and procedure, DEFENDANT has  
5 unlawfully, unfairly and/or deceptively classified every Clinical Research Coordinator as  
6 exempt based on job title alone, failed to pay required overtime compensation and otherwise  
7 failed to comply with all applicable labor laws with respect to these Clinical Research  
8 Coordinators.

9 17. The true names and capacities, whether individual, corporate, subsidiary,  
10 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
11 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names  
12 pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this  
13 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they  
14 are ascertained. PLAINTIFF is informed and believes, and based upon that information and  
15 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,  
16 inclusive, are responsible in some manner for one or more of the events and happenings that  
17 proximately caused the injuries and damages hereinafter alleged.

18 18. The agents, servants and/or employees of the Defendants and each of them acting  
19 on behalf of the Defendants acted within the course and scope of his, her or its authority as the  
20 agent, servant and/or employee of the Defendants, and personally participated in the conduct  
21 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
22 Consequently, the acts of each Defendant are legally attributable to the other Defendants and  
23 all Defendants are jointly and severally liable to the PLAINTIFF and the other AGGRIEVED  
24 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'  
25 agents, servants and/or employees.

### 26 THE CONDUCT

27 19. The finite set of tasks required of the PLAINTIFF and the other Clinical Research  
28 Coordinators as defined by DEFENDANT was executed by the PLAINTIFF and other Clinical

1 Research Coordinators through the performance of non-exempt data entry and following  
2 established checklists within a defined skill set.

3       20. Although the PLAINTIFF and the Clinical Research Coordinators other primarily  
4 performed non-exempt labor, DEFENDANT instituted a blanket classification policy, practice  
5 and procedure by which the PLAINTIFF and other Clinical Research Coordinators were  
6 classified as exempt from overtime compensation and other related benefits. By reason of this  
7 uniform exemption practice, policy and procedure applicable to the PLAINTIFF and the other  
8 Clinical Research Coordinators who performed this non-exempt labor, DEFENDANT engaged  
9 in a company-wide policy, practice and procedure which failed to properly classify the  
10 PLAINTIFF and the other Clinical Research Coordinators and thereby failed to pay them  
11 overtime wages for documented overtime worked. The proper classification of these employees  
12 is DEFENDANT's legal burden. As a result of DEFENDANT's intentional disregard of the  
13 obligation to meet this burden, DEFENDANT failed to pay all required overtime compensation  
14 for work performed by the PLAINTIFF and other Clinical Research Coordinators and violated  
15 the California Labor Code and regulations promulgated thereunder as herein alleged. In  
16 addition, DEFENDANT failed to provide all the legally required off-duty meal and rest breaks  
17 to the PLAINTIFF and the other AGGRIEVED EMPLOYEES as required by the applicable  
18 Wage Order and Labor Code. DEFENDANT did not have a policy or practice which provided  
19 meal and rest breaks to the PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a  
20 result, DEFENDANT's failure to provide the PLAINTIFF and the AGGRIEVED  
21 EMPLOYEES with legally required meal and rest breaks is evidenced by DEFENDANT's  
22 business records which contain no record of these breaks.

23       21. DEFENDANT, as a matter of law, has the burden of proving that (a) employees  
24 were properly classified as exempt and that (b) DEFENDANT otherwise complied with  
25 applicable laws. Other than the initial classification of the PLAINTIFF and the AGGRIEVED  
26 EMPLOYEES as exempt from being paid overtime based on job title alone, DEFENDANT had  
27 no business policy, practice, or procedure to ensure that the PLAINTIFF and the AGGRIEVED  
28 EMPLOYEES were properly classified as exempt, and in fact, as a matter of corporate policy

1 erroneously and unilaterally classified the PLAINTIFF and the AGGRIEVED EMPLOYEES  
2 as exempt based on job title alone.

3       22.     The PLAINTIFF and the AGGRIEVED EMPLOYEES, primarily performed non-  
4 exempt job duties during their employment with DEFENDANT, but were nevertheless  
5 classified by DEFENDANT as exempt from overtime pay and from time to time worked more  
6 than eight (8) hours a day and in excess of forty (40) hours a week.

7       23.     PLAINTIFF and the AGGRIEVED EMPLOYEES employed by DEFENDANT  
8 were not primarily engaged in work of a type that was or now is directly related to the  
9 management or general business operation of the employer's customers, when giving these  
10 words a fair but narrow construction. PLAINTIFF and the AGGRIEVED EMPLOYEES  
11 employed by DEFENDANT were also not primarily engaged in work of a type that was or now  
12 is performed at the level of the policy or management of DEFENDANT. PLAINTIFF and the  
13 AGGRIEVED EMPLOYEES employed by DEFENDANT were also not primarily engaged in  
14 work requiring knowledge of an advanced type in a field or science or learning customarily  
15 acquired by a prolonged course of specialized intellectual instruction and study, but rather their  
16 work primarily involved the performance of routine mental, manual, and/or physical processes.  
17 PLAINTIFF and the AGGRIEVED EMPLOYEES employed by DEFENDANT were also not  
18 primarily engaged in work that is predominantly intellectual and varied in character, but rather  
19 was routine mental, manual, mechanical, and/or physical work that was of such character that  
20 the output produced or the result accomplished could be standardized in relation to a given  
21 period of time.

22       24.     The fact that the work of PLAINTIFF and the AGGRIEVED EMPLOYEES may  
23 have involved work using a specialized skill set or technical abilities in a defined technical area  
24 does not mean that the PLAINTIFF and the AGGRIEVED EMPLOYEES employed by  
25 DEFENDANT were exempt from overtime wages. Indeed, the exercise of discretion and  
26 independent judgment must be more than the use of a highly technical skill set described in a  
27 manual or other source. The work that the PLAINTIFF and the AGGRIEVED EMPLOYEES  
28 employed by DEFENDANT were primarily engaged in was performing day-to-day mundane

1 and routine work that was required to be performed as part of the day-to-day-business of  
2 DEFENDANT. As a result, the PLAINTIFF and the other AGGRIEVED EMPLOYEES  
3 employed by DEFENDANT were primarily engaged in work that was not directly related to the  
4 management policies or general business operations of DEFENDANT and therefore should  
5 have been properly classified as non-exempt employees.

6 25. PLAINTIFF and the other AGGRIEVED EMPLOYEES were classified as  
7 exempt from California overtime and related laws by DEFENDANT, however, these employees  
8 did not have managerial duties or authority. PLAINTIFF and the AGGRIEVED EMPLOYEES  
9 performed ongoing day-to-day non-exempt activities. Furthermore, the PLAINTIFF and other  
10 AGGRIEVED EMPLOYEES were tightly controlled by company policy and by their managers,  
11 did not exercise discretion or independent judgment as to matters of significance, and their job  
12 duties were not directly related to DEFENDANT's management policies or general business  
13 operation.

14 26. PLAINTIFF and all other AGGRIEVED EMPLOYEES are and were uniformly  
15 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,  
16 DEFENDANT failed to take the proper steps to determine whether the PLAINTIFF, and other  
17 AGGRIEVED EMPLOYEES, were properly classified under the applicable Industrial Welfare  
18 Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, as exempt from  
19 applicable California labor laws. Since DEFENDANT affirmatively and wilfully misclassified  
20 the PLAINTIFF and other Clinical Research Coordinators in compliance with California labor  
21 laws, DEFENDANT'S practices violated and continue to violate California law. In addition,  
22 DEFENDANT acted deceptively by falsely and fraudulently telling the PLAINTIFF and other  
23 Clinical Research Coordinators that they were exempt from overtime pay when DEFENDANT  
24 knew or should have known that this statement was false and not based on known facts.

25 27. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her  
26 employees with an accurate itemized wage statement in writing showing, among other things,  
27 gross wages earned and all applicable hourly rates, including overtime rates, in effect during the  
28 pay period and the corresponding amount of time worked at each hourly rate. From time to

1 time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that  
2 identified the correct gross and net wages earned. Aside from the violations listed above,  
3 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the  
4 requirements under California Labor Code 226. As a result, from time to time DEFENDANT  
5 provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which  
6 violated Cal. Lab. Code § 226.

7 28. By reason of this uniform conduct applicable to the PLAINTIFF and all the  
8 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure  
9 which failed to correctly classify the PLAINTIFF and the AGGRIEVED EMPLOYEES as non-  
10 exempt. The proper classification of these employees is DEFENDANT's burden. As a result  
11 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT  
12 failed to properly calculate and/or pay all required overtime compensation for work performed  
13 by the AGGRIEVED EMPLOYEES and violated the applicable Wage Order, the California  
14 Labor Code and the regulations promulgated thereunder as herein alleged.

15 29. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be  
16 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the  
17 wages are paid not more than seven calendar days following the close of the payroll period.  
18 Cal. Lab. Code § 210 provides:

19 [I]n addition to, and entirely independent and apart from, any other penalty provided in  
20 this article, every person who fails to pay the wages of each employee as provided in  
21 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial  
22 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each  
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)  
for each failure to pay each employee, plus 25 percent of the amount unlawfully  
withheld.

23 30. DEFENDANT from time to time fails to pay PLAINTIFF and other  
24 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in  
25 accordance with Cal. Lab. Code § 204(d).

26 31. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED  
27 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.  
28 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-

1 discretionary remuneration, including but not limited to, incentives, shift differential pay, and  
2 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay  
3 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

4 32. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt  
5 employees be calculated by dividing the employee's total wages, not including overtime  
6 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days  
7 of employment.

8 33. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at  
9 the regular rate of pay. PLAINTIFF and AGGRIEVED EMPLOYEES routinely earned non-  
10 discretionary incentive wages which increased their regular rate of pay. However, when sick pay  
11 was paid, it was paid at the base rate of pay for PLAINTIFF and AGGRIEVED EMPLOYEES,  
12 as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section  
13 246.

14 34. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and  
15 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time  
16 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes  
17 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that  
18 PLAINTIFF and/or AGGRIEVED EMPLOYEES whose employment has separated are entitled  
19 to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

20 35. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
21 to collect or receive from an employee any part of wages theretofore paid by said employer to  
22 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other  
23 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to  
24 PLAINTIFF and AGGRIEVED EMPLOYEES, fails to disclose all aspects of the deductions  
25 from compensation payable to PLAINTIFF and AGGRIEVED EMPLOYEES, and thereby fails  
26 to pay these employees all wages due at each applicable pay period and upon termination.  
27 PLAINTIFF and AGGRIEVED EMPLOYEES seek recovery of all illegal deductions from  
28 wages according to proof, related penalties, interest, attorney fees and costs.

1           36.     DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
2 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses  
3 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of  
4 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section  
5 2802, employers are required to indemnify employees for all expenses incurred in the course  
6 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall  
7 indemnify his or her employee for all necessary expenditures or losses incurred by the employee  
8 in direct consequence of the discharge of his or her duties, or of his or her obedience to the  
9 directions of the employer, even though unlawful, unless the employee, at the time of obeying  
10 the directions, believed them to be unlawful."

11           37.     In the course of their employment PLAINTIFF and other AGGRIEVED  
12 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal  
13 cellular phones as a result of and in furtherance of their job duties as employees for  
14 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated  
15 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,  
16 PLAINTIFF and other AGGRIEVED EMPLOYEES were required by DEFENDANT to use  
17 their personal cellular phones. As a result, in the course of their employment with  
18 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed  
19 business expenses which included, but were not limited to, costs related to the use of their  
20 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

21           38.     As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and  
22 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time  
23 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes  
24 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that  
25 PLAINTIFF and AGGRIEVED EMPLOYEES whose employment has separated are entitled  
26 to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

27           39.     In violation of the applicable sections of the California Labor Code and the  
28 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,

1 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly  
2 and systematically failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES  
3 suitable seating when the nature of these employees' work reasonably permitted sitting.

4 40. DEFENDANT knew or should have known that PLAINTIFF and other  
5 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when  
6 it did not interfere with the performance of their duties, and that DEFENDANT did not provide  
7 suitable seating and/or did not allow them to sit when it did not interfere with the performance  
8 of their duties.

9 41. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED  
10 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order  
11 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf  
12 of herself and other AGGRIEVED EMPLOYEES as provided herein. Providing suitable  
13 seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of  
14 the obligation to meet this burden, DEFENDANT violated the California Labor Code and  
15 regulations promulgated thereunder as herein alleged.

16  
17 **JURISDICTION AND VENUE**

18 42. This Court has jurisdiction over this Action pursuant to California Code of Civil  
19 Procedure, Section 410.10.

20 43. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
21 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
22 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
23 in this County and/or conducts substantial business in this County, and (ii) committed the  
24 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED  
25 EMPLOYEES.

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698]**

4 **(By PLAINTIFF and Against All Defendants)**

5 44. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
6 herein, the prior paragraphs of this Complaint.

7 45. PAGA is a mechanism by which the State of California itself can enforce state  
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the  
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is  
10 fundamentally a law enforcement action designed to protect the public and not to benefit private  
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a  
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In  
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to  
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for  
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be  
16 subject to arbitration.

17 46. PLAINTIFF, and such persons that may be added from time to time who satisfy  
18 the requirements and exhaust the administrative procedures under the Private Attorney General  
19 Act, brings this Representative Action on behalf of the State of California with respect to herself  
20 and all individuals who are or previously were employed by DEFENDANT in California,  
21 including any employees staffed with DEFENDANT by a third party, as Clinical Research  
22 Coordinators and classified as exempt employees ("AGGRIEVED EMPLOYEES") during the  
23 time period of July 16, 2023 until a date as determined by the Court (the "PAGA PERIOD").

24 47. On July 16, 2024, PLAINTIFF gave written notice by electronic mail to the Labor  
25 and Workforce Development Agency (the "Agency") and by certified mail to the employer of  
26 the specific provisions of this code alleged to have been violated as required by Labor Code §  
27 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA Notice*  
28 *only without draft complaint*). The statutory waiting period for PLAINTIFF to add these

1 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF  
2 may now commence a representative civil action under PAGA pursuant to Section 2699 as the  
3 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein  
4 defined.

5 48. The policies, acts and practices heretofore described were and are an unlawful  
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the  
7 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record  
8 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed  
9 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required  
10 expenses, (f) failed to provide wages when due, and (g) failed to provide suitable seating, all  
11 in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204,  
12 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California  
13 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of  
14 Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage  
15 Order(s), and thereby gives rise to civil penalties as a result of such conduct.<sup>1</sup> PLAINTIFF  
16 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney  
17 General Act of 2004 as the representative of the State of California for the illegal conduct  
18 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
21 severally, as follows:

22 1. On behalf of the State of California and with respect to all AGGRIEVED  
23 EMPLOYEES:

24 A) Recovery of civil penalties as prescribed by the Labor Code Private  
25 Attorneys General Act of 2004; and,

26 B) An award of attorneys' fees and cost of suit, as allowable under the  
27 \_\_\_\_\_

28 <sup>1</sup>Plaintiff specifically excludes and/or does not allege any claims under California Labor  
Code §558(a)(3).

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law, including, but not limited to, pursuant to Labor Code §2699.

Dated: November 1, 2024    BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW  
LLP

By:              /s/ Nicholas De Blouw            
          Norman B. Blumenthal  
          Kyle R. Nordrehaug  
          Nicholas J. De Blouw  
  
          *Attorneys for Plaintiff*

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# EXHIBIT 1

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2255 CALLE CLARA

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WRITERS E-MAIL:

[Nick@bamlawca.com](mailto:Nick@bamlawca.com)

WRITERS EXT:

1004

July 16, 2024

CA3319

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

Rady Children's Hospital-San Diego  
Certified Mail #9589071052701151772812  
ANGELA M VIEIRA  
3020 CHILDREN'S WAY MC 5052  
SAN DIEGO, CA 92123

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Rady Children’s Hospital-San Diego in California, including any employees staffed with Rady Children’s Hospital-San Diego by a third party, as Clinical Research Coordinators and classified as exempt employees during the time period of July 16, 2023 until a date as determined by the Court. Our offices represent Plaintiff Esmeralda Elia (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Rady Children’s Hospital-San Diego (“Defendant”). Plaintiff was employed by Defendant in California as a Clinical Research Coordinator from September of 2023 to May 15, 2024 and entitled to overtime pay and the legally required meal and rest breaks and payment for all time worked under Defendant’s control. At all times during Plaintiff’s employment with Defendant, Plaintiff was classified as a salaried employee exempt from overtime wages and other related benefits. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed

to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5<sup>th</sup> 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a) *et seq.* Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.