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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JENNIFER BOULES-SYTA, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

NEIGHBORHOOD HEALTHCARE, a
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CVRI2404060

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of 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, 1197, 1197.1, 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).

1 Plaintiff Jennifer Boules-Syta (“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 Neighborhood Healthcare (referred to as
8 “DEFENDANT”) seeking only to recover PAGA civil penalties on behalf of all current and
9 former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to**
10 **recover anything other than penalties as permitted by California Labor Code § 2699.** To
11 the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek
12 underlying general and/or special damages for those violations, but simply the civil penalties
13 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.

26 **THE PARTIES**

27 5. Neighborhood Healthcare (“DEFENDANT”) is a Corporation that at all relevant
28

1 times mentioned herein conducted and continues to conduct substantial business in California.

2 6. DEFENDANT provides behavioral health counseling (therapy) services to
3 children, families & adults in California.

4 7. PLAINTIFF was employed by DEFENDANT in California from April of 2023
5 to July 4, 2023. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt
6 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
7 payment of minimum and overtime wages due for all time worked.

8 8. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to herself
11 and all individuals who are or previously were employed by DEFENDANT in California,
12 including any employees staffed with DEFENDANT by a third party, and classified as non-
13 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of February 15,
14 2023 until a date as determined by the Court (the "PAGA PERIOD").

15 9. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES
16 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
17 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
18 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
19 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
20 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
21 Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the
22 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
23 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

24 10. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
26 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
27 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
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1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
2 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
3 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
4 50, inclusive, are responsible in some manner for one or more of the events and happenings
5 that proximately caused the injuries and damages hereinafter alleged.

6 11. The agents, servants and/or employees of the Defendants and each of them
7 acting on behalf of the Defendants acted within the course and scope of his, her or its
8 authority as the agent, servant and/or employee of the Defendants, and personally
9 participated in the conduct alleged herein on behalf of the Defendants with respect to the
10 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
11 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
12 all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the
13 conduct of the Defendants' agents, servants and/or employees.

14 15 THE CONDUCT

16 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
17 was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time
18 worked, meaning the time during which an employee is subject to the control of an
19 employer, including all the time the employee is suffered or permitted to work.
20 DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without
21 paying them for all the time they are under DEFENDANT's control. Among other things,
22 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
23 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
24 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
25 break. DEFENDANT, as a matter of established company policy and procedure,
26 administers a uniform practice of rounding the actual time worked and recorded by
27 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
28 so that during the course of their employment, PLAINTIFF and the AGGRIEVED

1 EMPLOYEES are paid less than they would have been paid had they been paid for actual
2 recorded time rather than “rounded” time. Additionally, DEFENDANT engages in the
3 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off
4 the clock in that DEFENDANT, as a condition of employment, required these employees to
5 submit to mandatory temperature checks and symptom questionnaires for COVID-19
6 screening prior to clocking into DEFENDANT’s timekeeping system for the workday. As a
7 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
8 wage compensation, and off-duty meal breaks by working without their time being correctly
9 recorded and without compensation at the applicable rates. DEFENDANT’s policy and
10 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is
11 evidenced by DEFENDANT’s business records.

12 13. State law provides that employees must be paid overtime and meal and rest
13 break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the
14 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
15 tied to specific elements of an employee’s performance.

16 14. The second component of PLAINTIFF’s and the AGGRIEVED
17 EMPLOYEES’ compensation is DEFENDANT’s non-discretionary incentive program that
18 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
19 performance for DEFENDANT. The non-discretionary incentive program provided all
20 employees paid on an hourly basis with incentive compensation when the employees met the
21 various performance goals set by DEFENDANT. However, when calculating the regular
22 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
23 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
24 compensation as part of the employees’ “regular rate of pay” for purposes of calculating
25 overtime pay and meal and rest break premium pay. Management and supervisors described
26 the incentive program to potential and new employees as part of the compensation package.
27 As a matter of law, the incentive compensation received by PLAINTIFF and the
28 AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.” The failure to

1 do so has resulted in a underpayment of overtime compensation and meal and rest break
2 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

3 15. As a result of their rigorous work schedules, PLAINTIFF and the
4 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
5 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
6 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
7 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
8 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
9 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
10 which these employees were required by DEFENDANT to work ten (10) hours of work.
11 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
12 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
13 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
14 and in accordance with DEFENDANT's corporate policy and practice.

15 16. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
16 EMPLOYEES were also required from time to time to work in excess of four (4) hours
17 without being provided ten (10) minute rest periods. Further, these employees were denied
18 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
19 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
20 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
21 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
22 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
23 also not provided with one hour wages in lieu thereof. Additionally, the applicable
24 California Wage Order requires employers to provide employees with off-duty rest periods,
25 which the California Supreme Court defined as time during which an employee is relieved
26 from all work related duties and free from employer control. In so doing, the Court held that
27 the requirement under California law that employers authorize and permit all employees to
28 take rest period means that employers must relieve employees of all duties and relinquish

1 control over how employees spend their time which includes control over the locations
2 where employees may take their rest period. Employers cannot impose controls that prohibit
3 an employee from taking a brief walk - five minutes out, five minutes back. Here,
4 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
5 unconstrained walks and is unlawful based on DEFENDANT's rule which states
6 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
7 their rest period.

8 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and
9 pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
10 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
11 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
12 all time worked, meaning the time during which an employee was subject to the control of
13 an employer, including all the time the employee was permitted or suffered to permit this
14 work. DEFENDANT required these employees to work off the clock without paying them
15 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
16 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
17 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
18 EMPLOYEES forfeited time worked by working without their time being accurately
19 recorded and without compensation at the applicable minimum wage and overtime wage
20 rates. To the extent that the time worked off the clock does not qualify for overtime
21 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-
22 the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

23 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
24 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
25 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
26 provides that every employer shall furnish each of his or her employees with an accurate
27 itemized wage statement in writing showing, among other things, gross wages earned and all
28 applicable hourly rates in effect during the pay period and the corresponding amount of time

1 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
2 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
3 during the pay period and the total hours worked, and the applicable pay period in which the
4 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
5 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
6 identify such information. More specifically, the wage statements failed to identify the
7 accurate total hours worked each pay period. When the hours shown on the wage statements
8 were added up, they did not equal the actual total hours worked during the pay period in
9 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
10 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
11 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
12 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
13 statements which violated Cal. Lab. Code § 226.

14 19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
15 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
16 the wages are paid not more than seven (7) calendar days following the close of the payroll
17 period. Cal. Lab. Code § 210 provides:

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

25 20. DEFENDANT from time to time failed to pay PLAINTIFF and the
26 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
27 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Hourly” regular
28 wage payments.

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

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

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

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

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

21 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
22 to collect or receive from an employee any part of wages theretofore paid by said employer
23 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
24 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
25 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
26 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
27 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
28 pay period and upon termination.

1 26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
2 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred
3 by the PLAINTIFF and the 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
7 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
8 employee in direct consequence of the discharge of his or her duties, or of his or her
9 obedience to the directions of the employer, even though unlawful, unless the employee, at
10 the time of obeying the directions, believed them to be unlawful."

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

22 28. In violation of the applicable sections of the California Labor Code and the
23 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
24 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
25 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES suitable seating when the nature of these employees' work reasonably
27 permitted sitting.
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1 29. DEFENDANT knew or should have known that PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
3 when it did not interfere with the performance of their duties, and that DEFENDANT did
4 not provide suitable seating and/or did not allow them to sit when it did not interfere with
5 the performance of their duties.

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

13 31. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
14 terminated and DEFENDANT has not tendered payment of all wages owed as required by
15 law. Additionally, at all times during the term of PLAINTIFF's employment with
16 DEFENDANT, PLAINTIFF and AGGRIEVED EMPLOYEES earned and accrued vested
17 vacation and holiday time on the date of their termination pursuant to DEFENDANT's
18 uniform vacation policies and applicable California law. The amount of vacation pay
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and accumulated is
20 evidenced by DEFENDANT's business records. Additionally, DEFENDANT also underpaid
21 accrued vested vacation wages to PLAINTIFF and AGGRIEVED EMPLOYEES by failing
22 to pay such wages at the regular rate of pay and more specifically the final rate of pay that
23 included all non-discretionary incentive compensation. Rather than pay vacation wages at
24 the regular rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and
25 AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of the
26 PLAINTIFF's and the other AGGRIEVED EMPLOYEES' non-discretionary incentive
27 compensation into the vacation wage payment calculations. DEFENDANT failed to specify
28 in DEFENDANT's written vacation policy the rate at which PLAINTIFF and other

1 AGGRIEVED EMPLOYEES would be paid vacation upon leaving employment with
2 DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and procedure to
3 deny paying the AGGRIEVED EMPLOYEES all of their vested vacation and holiday time,
4 DEFENDANT failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES all vested
5 vacation time as wages due upon employment termination, in violation of the California
6 Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting
7 time penalties to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of
8 pay, instead of including all of the PLAINTIFF's and AGGRIEVED EMPLOYEES' non-
9 discretionary compensation into the waiting time penalty calculations. This failure by
10 DEFENDANT is believed to be the result of DEFENDANT's unlawful, unfair and deceptive
11 refusal to provide compensation for earned, accrued and vested vacation and holiday time, as
12 well as the corresponding waiting time penalties that were paid. DEFENDANT perpetrated
13 this unlawful, unfair and deceptive practice to the detriment of PLAINTIFF and other
14 AGGRIEVED EMPLOYEES. DEFENDANT's uniform practice and policy of failing to
15 pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all vested vacation and holiday
16 time accumulated at employment termination violated and continues to violate Section 227.3
17 of the California Labor Code.

18 32. All of the conduct and violations alleged herein occurred during the PAGA
19 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
20 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
21 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
22 2018 AJDAR 12157 (Certified for Publication 12/19/18).

23 **JURISDICTION AND VENUE**

24 33. This Court has jurisdiction over this Action pursuant to California Code of
25 Civil Procedure, Section 410.10.

26 34. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
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1 employs AGGRIEVED EMPLOYEES across California, including in this County, and
2 committed the wrongful conduct herein alleged in this County against AGGRIEVED
3 EMPLOYEES.

4 **FIRST CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 2698, *et seq.*]**

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

8 35. PLAINTIFF realleges and incorporates by this reference, as though fully set
9 forth herein, the prior paragraphs of this Complaint.

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

20 37. PLAINTIFF, and such persons that may be added from time to time who
21 satisfy the requirements and exhaust the administrative procedures under the Private
22 Attorney General Act, brings this Representative Action on behalf of the State of California
23 with respect to herself and all individuals who are or previously were employed by
24 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
25 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
26 time period of February 15, 2023 until a date as determined by the Court (the "PAGA
27 PERIOD").

28 38. On February 15, 2024, PLAINTIFF gave written notice by electronic mail to

1 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
2 employer of the specific provisions of this code alleged to have been violated as required by
3 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
4 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
5 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
6 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
7 pursuant to Section 2699 as the proxy of the State of California with respect to all
8 AGGRIEVED EMPLOYEES as herein defined.

9 39. The policies, acts and practices heretofore described were and are an unlawful
10 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
11 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
12 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
13 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
14 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
15 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
16 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2),
17 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
18 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure
19 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
20 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
21 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
22 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
23 and the AGGRIEVED EMPLOYEES.

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

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EXHIBIT 1

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**February 15, 2024
CA3202**

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

**Labor and Workforce Development Agency
Online Filing**

**Neighborhood Healthcare
Certified Mail #9589071052701316528766
RAKESH R PATEL
150 LA TERRAZA BLVD., SUITE 201
ESCONDIDO, CA 92025**

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, 1197, 1197.1, 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), and Violation of Applicable Industrial Welfare Commission Wage Order(s), Brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Neighborhood Healthcare in California, including any employees staffed with Neighborhood Healthcare by a third party, and classified as non-exempt employees during the time period of February 15, 2023 until a date as determined by the Court. Our offices represent Plaintiff Jennifer Boules-Syta (“Plaintiff”) and other Aggrieved Employees in a lawsuit Neighborhood Healthcare (“Defendant”). Plaintiff was employed with Defendant from April of 2023 to July 4, 2023 and was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. 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 and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, 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. 5th 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 Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and the Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). 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, 1197, 1197.1, 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 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 Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions or 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.