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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JOSEPH FERLATTE, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

v.

STANFORD HEALTH CARE, a
California nonprofit corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. 20CV365879

[Assigned for all purposes to the Hon. Brian C.
Walsh, Dept. 1]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
201-203;**

**(2) VIOLATION OF CAL. LABOR CODE §
226; AND**

**(3) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.***

DEMAND EXCEEDS \$25,000.00

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1 Plaintiff JOSEPH FERLATTE (“Plaintiff”) hereby submits this First Amended Class
2 Action Complaint (“Complaint”) against Defendant STANFORD HEALTH CARE, a California
3 nonprofit corporation (“Defendant,” or the “Company”), and DOES 1-50 (hereinafter collectively
4 referred to as “Defendants”), individually and on behalf of a Class of all other similarly situated
5 current and former employees of Defendants for penalties for violations of the California Labor
6 Code, including without limitation, failure to pay employees their sick pay at their regular rate of
7 pay and, as a result, failure to list the correct rate of pay for sick pay, as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code §§
10 201-203, 226, 2698, *et seq.*, and the California Industrial Welfare Commission’s (“IWC”) Wage
11 Orders.

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against employees of Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants jointly
15 and severally have acted knowingly and intentionally by failing to provide accurate itemized wage
16 statements identifying all required information, including without limitation, the correct overtime
17 rate, and paying overtime at the correct rate of pay.

18 **JURISDICTION AND VENUE**

19 4. The Court has jurisdiction over the violations of the California Labor Code §§ 201-
20 203, 226, and 2698, *et seq.*

21 5. Venue is proper in Santa Clara County because Defendants maintain business
22 locations in this County and Plaintiff worked at Defendants’ hospital located in this County.

23 **PARTIES**

24 6. On or about September 9, 2019, Plaintiff began working for Defendant kidney
25 transplant social worker at Defendants’ location in Palo Alto, California. Plaintiff was terminated on
26 March 20, 2020. During Plaintiff’s employment, he was paid sick pay wages and shift differential
27 wages.

28 7. Defendants provide medical services in Santa Clara County, California.

1 8. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
2 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
3 California Labor Code §§ 201-203, and 226.

4 9. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
5 mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and
6 partnerships, licensed to do business and actually doing business in the State of California.

7 10. As such, and based upon all the facts and circumstances incident to Defendants'
8 business in California, Defendants are subject to California Labor Code §§ 201-203, and 226.

9 11. Plaintiff does not know the true names or capacities, whether individual, partner or
10 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said
11 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
12 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
13 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
14 matters alleged herein and proximately caused Plaintiff and members of the general public and
15 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

16 12. At all times herein mentioned, each of said Defendants participated in the doing of
17 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
18 Defendants, and each of them, were the agents, servants and employees of each of the other
19 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
20 within the course and scope of said agency and employment.

21 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
23 joint venturer of, or working in concert with each of the other co- Defendants and was acting
24 within the course and scope of such agency, employment, joint venture, or concerted activity. To
25 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
26 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
27 Defendants.

28 14. At all times herein mentioned, Defendants, and each of them, were members of, and
engaged in, a joint venture, partnership and common enterprise, and acting within the course and

1 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

2 15. At all times herein mentioned, the acts and omissions of various Defendants, and
3 each of them, concurred and contributed to the various acts and omissions of each and all of the
4 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
5 herein mentioned, Defendants, and each of them, ratified each and every act or omission
6 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
7 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
8 damages as herein alleged.

9 **CLASS ACTION ALLEGATIONS**

10 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
11 California Code of Civil Procedure § 382, of the following class:

- 12 a. All non-exempt California employees who were paid non-discretionary
13 incentive wages including, but not limited to, shift differential wages and
14 sick pay from Defendant and whose employment ended, either voluntarily
15 or involuntarily, at any time during the period of time from March 30, 2017,
16 through the present (the “Sick Pay Class”);

17 17. **Numerosity and Ascertainability:** The members of the Class are so numerous
18 that joinder of all members would be impractical, if not impossible. The identity of the members
19 of the Class is readily ascertainable by review of the Defendants records, including payroll records.
20 Plaintiff is informed and believes, and based thereon alleges, that the Defendants failed to provide
21 accurate itemized wage statements to employees in violation of Labor Code § 226 and pay
22 employees their sick pay at their regular rate of pay in violation of Labor Code §§ 201-203.

23 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
24 necessary steps to represent fairly and adequately the interests of the class defined above.
25 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and the
26 named Plaintiffs. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in
27 the past and currently have a number of wage-and-hour class actions pending in California courts.

28 19. Defendants uniformly administered a corporate policy, practice of failing to provide
accurate itemized wage statements to employees in violation of Labor Code § 226 and pay

1 employees their sick pay at their regular rate of pay in violation of Labor Code §§ 201-203.

2 20. **Common Question of Law and Fact:** There are predominant common questions
3 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
4 concerning the Defendants failure to provide accurate itemized wage statements to employees in
5 violation of Labor Code § 226 and pay employees their sick pay at their regular rate of pay in
6 violation of Labor Code §§ 201-203.

7 21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
8 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
9 and typical manner as the Class members. Plaintiff was not provided proper and accurate payroll
10 records identifying all information required by Labor Code § 226(a). Specifically, Defendants
11 violated Labor Code § 226(a)(9) by, among other actions, failing to list the correct rate of pay
12 when Plaintiff was paid sick pay wages and shift differential wages covering the same pay period.
13 Further, Defendants violated Labor Code §§ 201-203 by failing to pay sick pay at the regular rate
14 of pay. Specifically, Plaintiff and all members of the class routinely earned non-discretionary
15 incentive wages such as shift differential wages and thus increased their rates of pay. However,
16 when sick pay was paid, it was paid at the Plaintiff and Class Members' base rate of pay rather
17 than the regular rate of pay. Thus, Plaintiff is a member of the Class and has suffered the alleged
18 violations of California Labor Code §§ 201-203, and 226.

19 22. The California Labor Code and upon which Plaintiff bases these claims is broadly
20 remedial in nature. These laws and labor standards serve an important public interest in
21 establishing minimum working conditions and standards in California. These laws and labor
22 standards protect the average working employee from exploitation by employers who may seek to
23 take advantage of superior economic and bargaining power in setting onerous terms and conditions
24 of employment.

25 23. The nature of this action and the format of laws available to Plaintiff and members
26 of the Class identified herein make the class action format a particularly efficient and appropriate
27 procedure to redress the wrongs alleged herein. If each employee were required to file an
28 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage
since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff

1 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
2 pursue an individual remedy would also discourage the assertion of lawful claims by employees
3 who would be disinclined to file an action against their former and/or current employer for real and
4 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

5 24. The prosecution of separate actions by the individual class members, even if
6 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
7 individual Class members against the Defendants and which would establish potentially
8 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
9 individual Class members which would, as a practical matter, be dispositive of the interest of the
10 other Class members not parties to the adjudications or which would substantially impair or
11 impede the ability of the Class members to protect their interests. Further, the claims of the
12 individual members of the Class are not sufficiently large to warrant vigorous individual
13 prosecution considering all of the concomitant costs and expenses.

14 25. Such a pattern, practice and uniform administration of corporate policy regarding
15 illegal employee compensation described herein is unlawful and creates an entitlement to recovery
16 by Plaintiffs and the Class identified herein, in a civil action any and all applicable penalties and/or
17 damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor
18 Code §§ 218.5, 226 and 1194 and Code of Civil Procedure § 1021.5.

19 26. Proof of a common business practice or factual pattern, which the named Plaintiffs
20 experienced and are representative of, will establish the right of each of the members of the Class
21 to recovery on the causes of action alleged herein.

22 27. The Class is commonly entitled to a specific fund with respect to the compensation
23 illegally and unfairly retained by the Defendants. The Class is commonly entitled to restitution of
24 those funds being improperly withheld by the Defendants. This action is brought for the benefit of
25 the entire class and will result in the creation of a common fund.

26 **FIRST CAUSE OF ACTION**

27 **VIOLATION OF LABOR CODE §§ 201-203**

28 **(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFF AND THE SICK PAY
CLASS)**

1 28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 as though
2 fully set for herein.

3 29. Labor Code §246(l)(1) requires that nonexempt employees be paid sick time in the
4 same manner as the regular rate of pay for the workweek in which the employee uses paid sick
5 time, whether or not the employee actually works overtime in that workweek.

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

9 31. Defendants violated Labor Code §246 by failing to pay sick pay at the regular rate
10 of pay. Plaintiff and Class Members routinely earned non-discretionary incentive wages such as
11 shift differential wages and thus increasing their regular rate of pay. However, when sick pay was
12 paid, it was paid at their base rate of pay rather than the regular rate of pay, as required under
13 Labor Code §246.

14 32. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
15 members of the Class their correct wages and accordingly owe waiting time penalties pursuant to
16 Labor Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such
17 failure to pay sick pay at regular rate was willful, such that Plaintiff and Class Members whose
18 employment has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-
19 203.

20 **SECOND CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226(a)**

22 **(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFF AND THE SICK PAY 23 CLASS)**

24 33. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 as though
25 fully set for herein.

26 34. The Defendants failed in its affirmative obligation to provide accurate itemized
27 wage statements in violation of Labor Code § 226(a). Specifically, Defendants violated Labor
28 Code § 226(a)(9) by, among other actions, failing to list the correct rate of pay when Plaintiff was
paid sick pay wages and shift differential wages covering the same pay period.

35. Plaintiff is informed and believes, and based thereon alleges, that that the Defendants' violation of Section 226(a) is class-wide.

36. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

THIRD CAUSE OF ACTION

VIOLATION OF CAL. LABOR CODE § 2698, ET SEQ.

**(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL
DEFENDANTS)**

37. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 36 as though fully set for herein.

38. Plaintiff brings this cause of action as a proxy for the State of California pursuant to the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*, and in this capacity seeks penalties on behalf of the State of California and all similarly aggrieved employees for the violations of Labor Code §§ 201-203, 226, 246, and 558 for the time period of March 30, 2019, through the present. As alleged above, Defendant violated Sections 201-203, 226, 246 and 558 by failing to pay sick pay at the correct and higher regular rate of pay and failing to provide accurate itemized wage statements listing the correct, higher regular rate of pay for sick pay wages.

39. On or about March 30, 2020, Plaintiff submitted written notice of these violations to the Labor Workforce Development Agency (the “LWDA”) and via certified mail to Defendant. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether it intends to investigate the violations of the Labor Code. As such, Plaintiff is permitted to proceed on his PAGA claims in this Court and, accordingly, seeks all applicable civil penalties pursuant to Labor Code §§ 226.3 and 2699, as well as costs and attorneys’ fees.

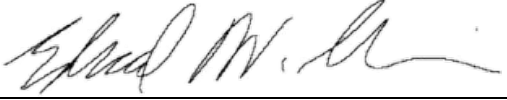
PRAYER FOR RELIEF

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

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for unpaid wages and/or penalties pursuant to California Labor Code §§ 201-203, and for costs and attorneys' fees pursuant to Labor Code §§ 218.5 and 1194;
5. Upon the Second Cause of Action, for penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for civil penalties pursuant to the PAGA, including without limitation, Labor Code §§ 226.3 and 2699, and for costs and attorneys' fees;
7. On all causes of action, for attorneys' fees and costs as provided by California Labor Code §§ 218.5, 226, 1194, 2699 and Code of Civil Procedure § 1021.5; and
8. For such other and further relief as the Court may deem just and proper.

DATED: June 3, 2020

LAW OFFICES OF CHOI & ASSOCIATES

By: 

Edward W. Choi
Attorneys for PLAINTIFF and the CLASS

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St., Suite 1250, Los Angeles, CA 90071.

On June 3, 2020, I served the foregoing document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

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 X **BY ELECTRONIC SERVICE**

I caused such document to be uploaded to Odyssey to be served on the offices of the addressees.

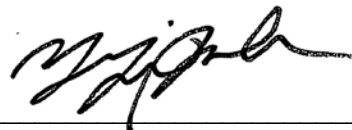
 BY PERSONAL SERVICE

I caused such envelope to be delivered by hand to the offices of the addressee.

 X **(State)** I declare under penalty of perjury that the foregoing is true and correct.

 (Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 3, 2020, at Los Angeles, California.



Michelle Lee