

Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
Ginger Grimes (SBN 307168)
ggrimes@gbdhlegal.com
GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

Attorneys for Plaintiffs and Putative Class

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 9/12/2023 11:37 AM
Reviewed By: R. Walker
Case #22CV395001
Envelope: 13000313**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ANDREW VEITCH, RAMONA McCAMISH, and
BENNIE SUMNER, individually, and on behalf of
others similarly situated,

Plaintiffs,

vs.

STANFORD HEALTH CARE, a corporation, and
DOES 1-20, inclusive,

Defendants.

Case No. 22CV395001

CLASS ACTION

FOURTH AMENDED COMPLAINT

- (1) Failure to Provide Timely Meal Periods;**
- (2) Failure to Pay Meal Period Premiums at the Regular Rate of Pay;**
- (3) Failure to Provide Accurate Wage Statements;**
- (4) Failure to Pay All Wages Owed at Separation;**
- (5) California Unfair Competition Law; and**
- (6) California Private Attorneys General Act.**

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

I. INTRODUCTION

1. Plaintiffs Andrew Veitch, Ramona McCamish, and Bennie “Jon” Sumner (together, “Plaintiffs”) bring this class action against Defendant Stanford Health Care and other unknown entities (“SHC” or “Defendant”) on behalf of themselves and certain other former and current Nurses in and adjacent to Stanford Hospital Operating Rooms and Cardiovascular Operating Rooms (together “OR”). The putative class includes only those Nurses in or adjacent to the OR who were not provided timely uninterrupted thirty-minute meal periods and were not provided an additional hour of compensation.

2. SHC operates several medical facilities, including Stanford Hospital in Palo Alto, California.

3. Plaintiffs allege that all current and former putative class members who worked in California are entitled to: (1) meal period premiums for late and missed meal breaks (Cal. Labor Code § 226.7, 512; Wage Order 5 § 11); (2) unpaid wages for meal period premium payments less than one hour of pay at the regular rate of compensation (Cal. Labor Code § 226.7, Wage Order 5 § 11); (3) statutory damages for Defendant’s failure to provide accurate itemized wage statements (Cal. Labor Code § 226); (4) statutory penalties for Defendant’s failure to pay all wages due and owing upon termination of employment (Cal. Labor Code §§ 201-203); (5) restitution and injunctive relief under the Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and (6) civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 *et seq.*, for Defendants’ failure to provide timely meal periods, pay meal period premiums for late or missed meal periods, pay meal period premiums at the regular rate of pay, provide accurate wage statements, pay timely wages, pay all wages due at termination, and keep accurate payroll records.

24
25
26
27
28

II. THE PARTIES

4. Plaintiff Andrew Veitch is a nurse in a SHC OR. Plaintiff Veitch has worked for SHC for over a decade and started working for SHC in 2019. Plaintiff Veitch lives in Aptos, California.

5. Plaintiff Ramona McCamish is a nurse at SHC. Plaintiff McCamish began working at SHC in November 2017. Plaintiff McCamish lives in Monterey, California.

1 13. Around March 16, 2022, SHC announced to at least some Nurses that those working
2 ten- and twelve-hour shifts are entitled to only one meal break per shift and are eligible for late meal
3 period penalties only if they specifically request a meal break at the fifth hour of work and are not
4 provided with a meal break at the requested time.

5 14. SHC provided wage statements to putative class members, but those wage statements
6 did not show that putative class members were owed or were paid late meal period premium wages for
7 late meal periods taken and even where meal period premiums were paid, the wage statements
8 frequently listed the incorrect rate of pay for meal period premiums.

9 15. SHC fails to pay all compensation due and owing to Nurses at the time their
10 employment with SHC ends. Plaintiff Sumner, for example, was not paid premium wages due for all
11 late or missed meal periods in his final paycheck.

12 **V. CLASS ACTION ALLEGATIONS**

13 16. Plaintiffs seek to proceed as a class action pursuant to California Code of Civil
14 Procedure § 382 on behalf of the following class of persons:

15 All Stanford Health Care nurses who were paid on an hourly basis and who
16 worked in California for Stanford Health Care as (1) an operating nurse, (2) a
17 peri-operative and/or post-operative nurse, or (3) a catheterization
18 laboratory/endoscopy/international radiology/procedure room nurse at any time
19 on or after March 4, 2018 who were not provided an uninterrupted thirty-minute
 meal period for every five hours of work and were not provided an additional
 hour of compensation at the regular rate of pay.

20 17. The putative class is so numerous that joinder of all members is impracticable.
21 Although the precise number of such persons is unknown, and the facts on which the calculation of
22 that number would be based are within the sole custody and/or control of Defendant, upon information
23 and belief, Defendant has employed over forty putative class members within the last four years. More
24 than two-thirds of the putative class members are citizens of California.

25 18. Among the proposed class, there is a well-defined community of interest in the
26 questions of law and/or fact involved. Those common questions include, but are not limited to:

27 a. Whether Defendant provided thirty minute off-duty meal periods to putative
28 class members within the first five hours of work or paid them premium wages;

1 b. Whether Defendant was required to issue class members wage statements with
2 information about meal period premium wages; and

3 c. Whether Defendant's Labor Code and Wage Order violations serve as predicate
4 violations of the UCL.

5 19. Common questions of law and/or fact predominate over questions that affect only
6 individual Class Members. Plaintiffs' claims are typical of those belonging to members of the class,
7 and Plaintiffs and their counsel can adequately represent the class.

8 **FIRST CAUSE OF ACTION**
9 **Failure to Provide Meal Periods**
 [Cal. Labor Code §§ 226.7, 512, and 1194; Wage Order 5]

10 20. Plaintiffs, on behalf of themselves and all class members, re-allege and incorporate by
11 reference the allegations contained in the paragraphs above as if fully set forth here.

12 21. California Labor Code § 512(a) states in pertinent part, "[A]n employer may not employ
13 an employee for a work period of more than five hours per day without providing the employee with a
14 meal period of not less than 30 minutes"

15 22. Wage Order 5 states, in relevant part, "No employer shall employ any person for a work
16 period of more than five (5) hours without a meal period of not less than 30 minutes." If no meal
17 period is provided, the Wage Order requires the employer to "pay the employee one (1) hour of pay at
18 the employee's regular rate of compensation for each workday that the meal period is not provided."

19 23. California Labor Code § 226.7 states, in relevant part, "An employer shall not require
20 an employee to work during a meal ... period mandated pursuant to an applicable statute, or applicable
21 regulation, standard, or order of the Industrial Welfare Commission." Section 226.7 requires an
22 employer to pay one additional hour of pay at the employee's regular rate if the meal period is not
23 provided.

24 24. Defendants failed to provide timely meal periods and pay meal period premium wages
25 for Plaintiffs and class members as required by California Labor Code §§ 226.7 and 512, and Wage
26 Order 5.

27 25. As a result of Defendant's failure to pay an hour of premium pay for each late or missed
28 meal period, Plaintiffs and class members are entitled to recover one hour of pay at their regular rate of

1 compensation for each workday that a meal period was not provided, plus interest, attorney's fees and
2 costs, as well as further relief as described below.

3 **SECOND CAUSE OF ACTION**

4 **Failure to Pay Meal Period Premiums at the Regular Rate of Compensation**
5 **[Cal. Labor Code §§ 226.7 and 1194; Wage Order 5]**

6 26. Plaintiffs, on behalf of themselves and all class members, re-allege and incorporate by
7 reference the allegations contained in the paragraphs above as if fully set forth here.

8 27. Wage Order 5 requires that if timely, off-duty meal periods are not provided in
9 accordance with the Order, the employer must "pay the employee one (1) hour of pay at the
10 employee's regular rate of compensation for each workday that the meal period is not provided."

11 28. California Labor Code section 226.7(c) provides that if "an employer fails to provide an
12 employee a meal or rest or recovery period in accordance with a state law...the employer shall the
13 employee one additional hour of pay at the employee's regular rate of compensation for each workday
14 that the meal or rest or recovery period is not provided."

15 29. Defendants failed to pay meal period premium wages at the regular rate of
16 compensation for late and missed meal periods as required by California Labor Code § 226.7 and
17 Wage Order 5.

18 30. As a result of Defendant's failure to premium pay at the regular rate of compensation
19 for late or missed meal period, Plaintiffs and class members are entitled to recover unpaid wages,
20 interest, attorney's fees and costs, as well as further relief as described below.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Provide Accurate Itemized Wage Statements**
23 **[Cal. Labor Code § 226]**

24 31. Plaintiffs, on behalf of themselves and all class members, re-allege and incorporate by
25 reference the allegations contained in the paragraphs above as if fully set forth here.

26 32. California Labor Code § 226 provides, in relevant part, that every employer must
27 furnish each employee with an itemized wage statement at the time of each payment of wages showing
28 the total numbers of hours worked each pay period, gross wages, net wages, all deductions, all
applicable hourly rates of pay, the dates of the period for which the employee is paid, the name of the

1 employee and the last four digits of their social security number or employee identification number,
2 and the name and address of the legal entity that is the employer.

3 33. Defendant knowingly and intentionally failed to furnish Plaintiffs and class members
4 accurate itemized wage statements showing meal period premiums owed and paid for all late and
5 missed meal periods.

6 34. During all relevant times, Plaintiffs and class members were injured by these failures
7 because, among other things, they were confused about whether they were paid meal period premium
8 wages properly.

9 35. California Labor Code § 226(e)(1) provides that an employee suffering injury as a result
10 of a knowing and intentional failure by an employer to provide accurate itemized wage statements is
11 entitled to recover the greater of all actual damages suffered or fifty dollars (\$50) for the initial
12 violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars
13 (\$4,000).

14 36. Pursuant to California Labor Code § 226(h), Plaintiffs and class members are entitled to
15 injunctive relief to ensure Defendant's compliance with California Labor Code § 226.

16 37. Plaintiffs and class members are entitled to an award of costs and reasonable attorneys'
17 fees under California Labor Code § 226(h), as well as further relief as described below.

18 **FOURTH CAUSE OF ACTION**
19 **Failure to Pay All Wages Owed Upon Termination**
20 **[Cal. Labor Code §§ 201-203]**

21 38. Plaintiff Sumner, on behalf of himself and all class members, re-alleges and
22 incorporates by reference the allegations contained in the paragraphs above as if fully set forth here.

23 39. California Labor Code § 201 provides that if an employer discharges an employee, the
24 wages earned and unpaid are due and payable immediately.

25 40. California Labor Code § 202 provides that if an employee not having a written contract
26 for a definite period quits their employment, the employee's wages shall become due and payable not
27 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of their intention
28 to quit, in which case the employee is entitled to their wages at the time of quitting.

1 41. California Labor Code § 203 provides that if an employee willfully fails to pay the
2 wages of an employee who is discharged or who quits, the wages of the employee shall continue as a
3 penalty from the due date thereof at the same rate until paid or until an action is commenced for up to
4 thirty (30) days.

5 42. As a result of Defendant's Labor Code violations alleged above, Defendant regularly
6 failed to pay Class Members all wages owed, including meal period premiums at the regular rate of
7 compensation, in their final paychecks pursuant to Labor Code §§ 201 and 202 and accordingly owe
8 waiting time penalties pursuant to Labor Code § 203.

9 43. The conduct of Defendant was done willfully in violation of the rights of Plaintiff
10 Sumner and Class Members.

11 44. Defendant's willful failure to provide Plaintiff Sumner and Class Members all wages
12 due and owing upon separation from employment results in a continuation of wages up to thirty (30)
13 days from the time the wages were due. Therefore, Plaintiff Sumner and the Class Members who have
14 separated from their employment with Defendant are entitled to compensation pursuant to Labor Code
15 § 203, as well as further relief described below.

16 **FIFTH CAUSE OF ACTION**
17 **Unfair Competition Law Violations**
 [Cal. Bus. & Prof. Code §§ 17200 *et seq.*]

18 45. Plaintiffs, on behalf of themselves and all class members, re-allege and incorporate by
19 reference the allegations contained in the paragraphs above as if fully set forth here.

20 46. California Business & Professions Code §§ 17200 *et seq.* prohibits unfair competition
21 in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

22 47. Plaintiffs bring this cause of action individually and representative of all others subject
23 to Defendant's unlawful acts and practices.

24 48. In the four years prior to the filing of the original Complaint, Defendant committed
25 unlawful, unfair, deceptive, and/or fraudulent acts as defined by California Business & Professions
26 Code § 17200. Defendant's unlawful, unfair, deceptive, and/or fraudulent business practices include,
27 without limitation, failing to pay meal period premiums for late meal periods.
28

1 49. As a result of these unlawful, unfair, and/or fraudulent business practices, Defendant
2 reaped unfair benefits and illegal profits at the expense of Plaintiffs and class members.

3 **SIXTH CAUSE OF ACTION**

4 **Violation of the Labor Code Private Attorney General Act of 2004 (“PAGA”)**

5 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

6 50. Plaintiffs re-allege and incorporate by reference the allegations contained in the
7 paragraphs above as if fully set forth here.

8 51. Plaintiffs are “aggrieved employees” under PAGA, as they were employed by
9 Defendant during the applicable statutory period and suffered one or more Labor Code violations.

10 52. Plaintiffs seek to recover PAGA civil penalties through a representative action as
11 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969
12 (Cal. Ct. App. 2009). Class certification of the PAGA claims is not required, but Plaintiffs may seek
13 certification of the PAGA claims.

14 53. Plaintiffs seek to pursue remedies pursuant to PAGA for the following violations:

15 a. For Defendant’s failure to provide timely meal periods under Labor Code
16 section 512 and Wage Order 5 section 11, Labor Code section 558 imposes a civil penalty of fifty
17 dollars (\$50) for initial violations and one hundred dollars (\$100) for subsequent violations. For
18 Defendant’s failure to pay premiums for meal period violations under Labor Code section 226.7, Labor
19 Code section 2699(f) imposes a civil penalty of one hundred dollars (\$100) for each aggrieved
20 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
21 employee per pay period for each subsequent violation.

22 b. For Defendant’s failure to pay meal period premiums for late and missed meal
23 periods, including the failure to pay meal period premiums at the regular rate of compensation, Labor
24 Code section 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each aggrieved
25 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
26 employee per pay period for each subsequent violation.

27 c. For Defendant’s failure to provide accurate wage statements, Labor Code
28 section 226.3 imposes a civil penalty of two hundred fifty dollars (\$250) for initial violations of Labor
Code section 226(a), and one thousand dollars (\$1,000) per aggrieved employee for each subsequent

1 violation. Labor Code section 2699(f) imposes a civil penalty of one hundred dollars (\$100) for each
2 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
3 aggrieved employee per pay period for each subsequent violation.

4 d. For Defendant's failure to pay wages owed in a timely manner as required by
5 Labor Code section 204, Labor Code section 210 imposes a civil penalty of one hundred dollars (\$100)
6 for each failure to pay each employee for any initial violation and two hundred dollars (\$200) for each
7 failure to pay each employee, plus 25 percent of the amount unlawfully withheld, for each subsequent
8 violation or any willful or intentional violation.

9 e. For Defendant's failure to pay all wages to an employee who is discharged or
10 quits, Labor Code section 256 imposes a civil penalty in an amount not exceeding thirty (30) days'
11 pay.

12 f. For Defendant's willful failure to keep accurate records as required by
13 California Labor Code section 1174(d), including records of employees' meal periods and meal period
14 premiums owed to employees, Defendant is subject to a civil penalty of five hundred dollars (\$500)
15 under Labor Code section 1174.5.

16 54. On March 4, 2022, Plaintiffs Veitch and McCamish submitted a claim notice with the
17 California Labor and Workforce Development Agency ("LWDA"), Case Number LWDA-CM-
18 871685-22, a copy of which was sent via certified mail to Defendant. Plaintiffs submitted an amended
19 PAGA Notice to the LWDA on September 26, 2022, a copy of which was sent via certified mail to
20 Defendant. As of today's date, the LWDA has provided no notice to Plaintiffs regarding its intention
21 to investigate or not investigate Plaintiffs' claims.

22 55. Enforcement of statutory provisions to protect workers and to ensure proper and prompt
23 payment of wages is a fundamental public interest. Plaintiffs' successful enforcement of important
24 rights affecting the public interest will confer a significant benefit upon the general public. Private
25 enforcement of these rights is necessary, as no public agency has pursued enforcement. Plaintiffs are
26 incurring a financial burden in pursuing this action, and it would be against the interests of justice to
27 require the payment of attorneys' fees and costs from any recovery obtained.

1 56. As a result of the violations alleged, Plaintiffs, on behalf of themselves and other
2 aggrieved employees, seek all civil penalties available pursuant to California Labor Code § 2699,
3 including all civil penalties, attorneys' fees, expenses, and costs of suit.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request this Court to grant the following relief against
6 Defendant as follows:

7 A. Certify this action as a class action pursuant to California Code of Civil Procedure
8 section 382 for class members, and appoint Plaintiffs as class representatives and their attorneys as
9 class counsel;

10 B. Direct class notice to all class members;

11 C. Award compensation for Defendant's failure to pay late and missed meal period
12 penalties at the regular rate of compensation;

13 D. Award statutory penalties for Defendant's failure to provide accurate itemized wage
14 statements;

15 E. Award statutory penalties for Defendant's failure to pay all wages owed upon
16 termination or separation;

17 F. Award civil penalties;

18 G. Award pre-judgment and post-judgment interest;

19 H. Order Defendant to make restitution to Plaintiffs and other class members due to their
20 unlawful and/or unfair business practices, including interest;

21 I. Enjoin Defendant from violating California law;

22 J. Award costs and expenses of this action;

23 K. Award reasonable attorneys' fees; and

24 L. Award such other relief as this Court deems just and proper.

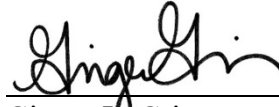
25 **JURY TRIAL DEMANDED**

26 Plaintiffs demand a trial by jury on claims so triable.

1 Dated: September 12, 2023

Respectfully submitted,

2 GOLDSTEIN, BORGEN, DARDARIAN & HO

3 

4 Ginger L. Grimes

5 Attorneys for Plaintiffs and Putative Class

1 **PROOF OF SERVICE**

2 Case: *Veitch. et al. v. Stanford Health Care.*

3 Case No.: 22CV395001

4 STATE OF CALIFORNIA)
5) SS
6 COUNTY OF ALAMEDA)

7 I have an office in the county aforesaid. I am over the age of eighteen years and not a party to
8 the within entitled action. My business address is 155 Grand Avenue, Suite 900, Oakland, California
9 94612.

10 I declare that on the date hereof I served a copy of

11 **FOURTH AMENDED COMPLAINT**

12 SEE LIST BELOW

13 ☒ **By Electronic Service:** Based on a court order or an agreement of the parties to accept
14 electronic service, I caused the documents to be sent to the persons at the electronic service
15 address(es) as set forth below.

16 ☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed at Oakland, California on September 12, 2023

19 Damon Valdez

20 Printed Name



21 Signature

22 **SERVICE LIST**

23 Michael D. Bruno

24 mbruno@grsm.com

25 Rachel Wintterle

26 rwintterle@grsm.com

27 Julie Vernon

28 jvernon@grsm.com

Meg Naizghi

mnaizghi@grsm.com

GORDON REES SCULLY

MANSUKHANI, LLP

275 Battery Street, Suite 2000

San Francisco, California 94111