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Case #22CV395001
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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

SECOND AMENDED COMPLAINT

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

DEMAND FOR JURY TRIAL

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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 the Stanford Hospital Operating Rooms and Cardiovascular Operating Rooms (together “OR”). The putative class includes only those Nurses in the OR who were not provided a timely uninterrupted thirty-minute meal period 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 meal breaks (Cal. Labor Code § 226.7, 512; Wage Order 5 § 11); (2) statutory damages for Defendant’s failure to provide accurate itemized wage statements (Cal. Labor Code § 226); (3) statutory penalties for Defendant’s failure to pay all wages due and owing upon termination of employment (Cal. Labor Code §§ 201-203); (4) restitution and injunctive relief under the Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and (5) 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, provide accurate wage statements, pay timely wages, pay all wages due at termination, and keep accurate payroll records.

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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 in the OR in 2019. Plaintiff Veitch lives in Aptos, California.

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

6. Plaintiff Bennie “Jon” Sumner worked as a SHC OR nurse from around August 2016 until around April 2021. Plaintiff Sumner lives in San Francisco, California.

7. Defendant Stanford Health Care is a medical services corporation that operates its main location at Stanford Hospital, located at 500 Pasteur Drive, Palo Alto, California.

8. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated as DOES when such identities become known.

III. VENUE

9. Venue is proper pursuant to Code of Civil Procedure Section 395(a) because Defendant has contracted to provide services, provides such services, and resides in Santa Clara County.

IV. FACTUAL BACKGROUND

10. SHC classifies putative class members as non-exempt and pays them on an hourly basis.

11. Prior to August 2021, putative class members were told by their managers that they were eligible for and were permitted to record a late meal period only if they were provided a meal break after the start of their sixth hour of work. Putative class members were not paid a late meal period premium wage if they started their lunch break between their fifth hour of work and sixth hour of work.

12. Around August 2021, after some putative class members complained, SHC management told them that they could begin recording late meal periods on the timekeeping system for lunches taken after the beginning of the fifth hour of their shift rather than only after the sixth hour. Once they were informed of this change in practice, putative class members who recorded meal periods between the fifth and sixth hour of work, and who also were approved by the Charge Nurse, began receiving meal period premiums.

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

1 14. SHC provided wage statements to putative class members, but those wage statements
2 did not show that OR Staff Members were owed or were paid late meal period premium wages for late
3 meal periods taken without a late meal period penalty paid.

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

7 **V. CLASS ACTION ALLEGATIONS**

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

10 All Stanford Health Care nurses who were paid on an hourly basis and who worked
11 in Stanford Hospital's ORs at any time on or after March 4, 2018 who were not
12 provided an uninterrupted thirty-minute meal period by the fifth hour of work and
were not provided an additional hour of compensation.

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

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

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

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

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

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

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

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

9 21. Wage Order 5 states, in relevant part, “No employer shall employ any person for a work
10 period of more than five (5) hours without a meal period of not less than 30 minutes.” If no meal
11 period is provided, the Wage Order requires the employer to “pay the employee one (1) hour of pay at
12 the employee’s regular rate of compensation for each workday that the meal period is not provided.”

13 22. California Labor Code § 226.7 states, in relevant part, “An employer shall not require
14 an employee to work during a meal ... period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission.” Section 226.7 requires an
16 employer to pay one additional hour of pay at the employee’s regular rate if the meal period is not
17 provided.

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

21 24. As a result of Defendant’s failure to pay an hour of premium pay for each late meal
22 period, Plaintiffs and class members are entitled to recover one hour of pay at their regular rate of
23 compensation for each workday that a meal period was not provided, plus interest, attorney’s fees and
24 costs, as well as further relief as described below.

25 **SECOND CAUSE OF ACTION**
26 **Failure to Provide Accurate Itemized Wage Statements**
27 **[Cal. Labor Code § 226]**

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

1 26. California Labor Code § 226 provides, in relevant part, that every employer must
2 furnish each employee with an itemized wage statement at the time of each payment of wages showing
3 the total numbers of hours worked each pay period, gross wages, net wages, all deductions, all
4 applicable hourly rates of pay, the dates of the period for which the employee is paid, the name of the
5 employee and the last four digits of their social security number or employee identification number,
6 and the name and address of the legal entity that is the employer.

7 27. Defendant knowingly and intentionally failed to furnish Plaintiffs and class members
8 accurate itemized wage statements showing meal period premiums owed and paid for all late meal
9 periods.

10 28. During all relevant times, Plaintiffs and class members were injured by these failures
11 because, among other things, they were confused about whether they were paid meal period premium
12 wages properly.

13 29. California Labor Code § 226(e)(1) provides that an employee suffering injury as a result
14 of a knowing and intentional failure by an employer to provide accurate itemized wage statements is
15 entitled to recover the greater of all actual damages suffered or fifty dollars (\$50) for the initial
16 violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars
17 (\$4,000).

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

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

22 **THIRD CAUSE OF ACTION**
23 **Failure to Pay All Wages Owed Upon Termination**
 [Cal. Labor Code §§ 201-203]

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

26 33. California Labor Code § 201 provides that if an employer discharges an employee, the
27 wages earned and unpaid are due and payable immediately.

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

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

9 36. As a result of Defendant's Labor Code violations alleged above, Defendant regularly
10 failed to pay OR Nurses all wages owed, including meal period premiums, in their final paychecks
11 pursuant to Labor Code §§ 201 and 202 and accordingly owe waiting time penalties pursuant to Labor
12 Code § 203.

13 37. The conduct of Defendant was done willfully in violation of the rights of Plaintiff
14 Sumner and Class Members.

15 38. Defendant's willful failure to provide Plaintiff Sumner and Class Members all wages
16 due and owing upon separation from employment results in a continuation of wages up to thirty (30)
17 days from the time the wages were due. Therefore, Plaintiff Sumner and the Class Members who have
18 separated from their employment with Defendant are entitled to compensation pursuant to Labor Code
19 § 203, as well as further relief described below.

20 **FOURTH CAUSE OF ACTION**
21 **Unfair Competition Law Violations**
 [Cal. Bus. & Prof. Code §§ 17200 *et seq.*]

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

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

26 41. Plaintiffs bring this cause of action individually and representative of all others subject
27 to Defendant's unlawful acts and practices.

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

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

7 **FIFTH CAUSE OF ACTION**
8 **Violation of the Labor Code Private Attorney General Act of 2004 ("PAGA")**
9 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

10 44. Plaintiffs re-allege and incorporate by reference the allegations contained in the
11 paragraphs above as if fully set forth here.

12 45. Plaintiffs are "aggrieved employees" under PAGA, as they were employed by
13 Defendant during the applicable statutory period and suffered one or more Labor Code violations.

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

18 47. Plaintiffs seek to pursue remedies pursuant to PAGA for the following violations:

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

26 b. For Defendant's failure to provide accurate wage statements, Labor Code
27 section 226.3 imposes a civil penalty of two hundred fifty dollars (\$250) for initial violations of Labor
28 Code section 226(a), and one thousand dollars (\$1,000) per aggrieved employee for each subsequent
violation. Labor Code section 2699(f) imposes a civil penalty of one hundred dollars (\$100) for each

1 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
2 aggrieved employee per pay period for each subsequent violation.

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

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

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

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

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

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

1 **PRAYER FOR RELIEF**

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

- 4 A. Certify this action as a class action pursuant to California Code of Civil Procedure
5 section 382 for class members, and appoint Plaintiffs as class representatives and their attorneys as
6 class counsel;
- 7 B. Direct class notice to all class members;
- 8 C. Award compensation for Defendant's failure to pay late meal period penalties;
- 9 D. Award statutory penalties for Defendant's failure to provide accurate itemized wage
10 statements;
- 11 E. Award statutory penalties for Defendant's failure to pay all wages owed upon
12 termination or separation;
- 13 F. Award civil penalties;
- 14 G. Award pre-judgment and post-judgment interest;
- 15 H. Order Defendant to make restitution to Plaintiffs and other class members due to their
16 unlawful and/or unfair business practices, including interest;
- 17 I. Enjoin Defendant from violating California law;
- 18 J. Award costs and expenses of this action;
- 19 K. Award reasonable attorneys' fees; and
- 20 L. Award such other relief as this Court deems just and proper.

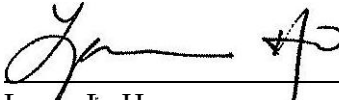
21 **JURY TRIAL DEMANDED**

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

23 Dated: July 21, 2022

Respectfully submitted,

24 GOLDSTEIN, BORGEN, DARDARIAN & HO

25 
26 _____
Laura L. Ho

27 Attorneys for Plaintiffs and Putative Class

PROOF OF SERVICE

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

Case No.: 22CV395001

STATE OF CALIFORNIA)
) SS
COUNTY OF ALAMEDA)

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

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

SECOND AMENDED COMPLAINT

SEE ATTACHED LIST, ATTACHED

- ☒ **By Electronic Service:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service address(es) as set forth below.
- ☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on July 21, 2022

Damon Valdez

Printed Name



Signature

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