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10 COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 KAREN PERKINS, on behalf of the general
public as private attorney general,
13

14 Plaintiffs,

15 v.

16 NEIGHBORHOOD HEALTHCARE, a
California Corporation, and DOES 1-50,
17 inclusive,
18

Case No.
Assigned for all Purposes to:
Hon.
Dept.

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§2698 *et seq*)**

COMES NOW Plaintiff KAREN PERKINS (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants NEIGHBORHOOD HEALTHCARE, a California Corporation, and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to accurately pay overtime wages as required by Labor Code §§ 510 and 1194 (b) failure to authorize and permit rest periods and to pay premium wages in lieu thereof required by Labor Code § 226.7, (c) failure to provide meal periods and to pay premium wages in lieu thereof required by Labor Code § 226.7, (d) failure to pay timely wages required by Labor Code §§ 201, 203, 204 and (e) failure to provide accurate itemized wage statements as required by Labor Code § 226. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees as well.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the

1 California Courts consistent with traditional notions of fair play and substantial justice.

2 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
3 Civil Procedure section 395. Defendants NEIGHBORHOOD HEALTHCARE, are operating and
4 doing business throughout, California, and each Defendant is within the jurisdiction of this Court
5 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
6 and all other aggrieved employees within the State of California and San Diego County.
7 Defendants employ numerous aggrieved employees throughout California.

8 6. Defendants are corporations engaged the operation of various healthcare facilities
9 throughout California. On information and belief, Defendants have conducted business within the
10 State of California during the purported liability period and continue to conduct business
11 throughout the State of California. The unlawful acts alleged herein have had a direct effect on
12 Plaintiff, and the similarly situated non-exempt aggrieved employees within San Diego County
13 and throughout the State of California.

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendant consistently maintained and enforced against
21 Defendant's Non-Exempt Employees ("Aggrieved Employees"), among others, the following
22 unlawful practices and policies, in violation of California state wage and hour laws (a) failure to
23 accurately pay overtime wages as required by Labor Code §§ 510 and 1194 (b) failure to
24 authorize and permit rest periods and to pay premium wages in lieu thereof required by Labor
25 Code § 226.7, (c) failure to provide meal periods and to pay premium wages in lieu thereof
26 required by Labor Code § 226.7, (d) failure to pay timely wages required by Labor Code §§ 201,
27 203, 204 and (e) failure to provide accurate itemized wage statements as required by Labor Code
28 § 226.

9. On information and belief, during the statutory liability period and continuing to the present (rest and meal period liability period), Defendants have had a consistent policy of requiring its Non-Exempt Employees within the State of California, including Plaintiffs, to work at least five (5) and or ten (10) hours without a meal period and failing to pay or accurately pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the meal period is not provided, as required by California state wage and hour laws.

10. On information and belief, during the statutory liability period and continuing to the present (rest and meal period liability period), Defendants have had a consistent policy of requiring its Non-Exempt Employees within the State of California, including Plaintiffs, to work in excess of four hours and or ten (10) hours without authorizing and permitting a rest period and failing to pay or accurately pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the rest period is not authorized and permitted, as required by California state wage and hour laws.

11. On information and belief, during the statutory liability period and continuing to the present, Defendants have had a consistent policy of failing to provide accurate itemized wage statements.

12. On information and belief, during the statutory liability period and continuing to the present, Defendants have had a consistent policy of failing timely pay wages upon termination.

13. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-204, 510, 512, 558, 226, 266.3, 226.7, 266.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198,, and, seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

14. Plaintiff, KAREN PERKINS, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendants in Escondido, California in approximately

1 September 2009 through approximately March 2020 as a Non-Exempt Employee with the title of
2 Insurance Biller.

3 15. As Defendants' employee, Plaintiff, and all other aggrieved employees were
4 regularly required to and subsequently suffered from Defendants':

5 i. failure to accurately pay overtime wages in violation of Labor Code §§
6 510, 1194, 1197;

7 ii. failure to allow or permit Plaintiff and Aggrieved employees' to leave the
8 premises during rest periods;

9 iii. failure provided accurate itemized wage statements pursuant to Labor Code
10 section 226;

11 iv. failure to pay all wages owed upon separation from the Defendants'
12 employ pursuant to Labor Code §§ 201-204

13 16. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general
14 public as private attorney general and all other aggrieved employees..

15 **B. Defendants**

16 17. Defendants, NEIGHBORHOOD HEALTHCARE, own and operate healthcare
17 facilities offering various types of healthcare services to individuals throughout California.
18 Plaintiff estimates there are in excess of one hundred Non-Exempt Employees who work or have
19 worked for Defendants over the last year.

20 18. Other than identified herein, Plaintiff is unaware of the true names, capacities,
21 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
22 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
23 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
24 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
25 are ascertained

26 19. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
27 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
28 Representative Group , and exercised control over their wages, hours, and working conditions.

1 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
2 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
3 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
4 attributable to the other defendants.

5 **IV. GENERAL ALLEGATIONS**

6 20. Plaintiff is informed and believes, and based thereon alleges that Defendants
7 employ or employed Non-Exempt Employees throughout the State of California during the
8 liability period. Plaintiff and all other aggrieved employees were compensated based upon an
9 hourly rate and have at all times pertinent hereto been non-exempt within the meaning of the
10 California Labor Code and the implementing rules and regulations of the IWC California Wage
11 Orders.

12 21. On information and belief, and during the relevant time frame, Defendants
13 implemented a uniform set of policies and practices to all aggrieved employees throughout
14 California regardless of the location they were employed.

15 22. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
16 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
17 of the requirements of California's wage and employment laws.

18 23. Upon information and belief, Defendants failed to accurately calculate bonuses
19 earned by Plaintiff and Class Members into their regular rates of pay for overtime purposes.

20 24. Upon information and belief, Defendants failed to allow or permit Plaintiff and
21 Aggrieved employees' to leave the premises during rest periods.

22 25. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
23 excess of five hours without being provided a lawful meal period and over ten hours in a day
24 without being provided a second lawful meal period as required by law.

25 26. Indeed, during the relevant time, as a consequence of Defendants' staffing and
26 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
27 Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally
28 complaint uninterrupted 30-minute meal periods on shifts over five hours as required by law.

1 Plaintiffs and Aggrieved Employees would often work through their meal periods to meet their
2 sales quotas and due to a lack of relief to take a meal period.

3 27. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
4 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
5 to provide Plaintiffs and the Aggrieved Employees legally compliant second meal periods on
6 shifts over ten hours as required by law.

7 28. On information and belief, Plaintiff and Aggrieved Employees did not waive their
8 rights to meal periods under the law.

9 29. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-
10 duty meal periods.

11 30. Plaintiff and the Aggrieved Employees were not allowed to leave the premises
12 during meal periods.

13 31. Despite the above-mentioned meal period violations, Defendants failed to
14 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
15 one additional hour of pay at their regular rate as required by California law when meal periods
16 were not timely or lawfully provided in a compliant manner.

17 32. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
18 should know, knew, and/or should have known that Plaintiffs and the other Aggrieved Employees
19 were entitled to receive premium wages based on their regular rate of pay under Labor Code
20 §226.7 but were not receiving such compensation.

21 33. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
22 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
23 period for every four hours worked or major fraction thereof, which is a violation of the Labor
24 Code and IWC wage order.

25 34. Defendants maintained and enforced scheduling practices, policies, and imposed
26 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
27 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
28 requisite rest periods were not timely authorized and permitted. Plaintiff and Aggrieved
Employees would often work through their rest periods to meet their sales quotas and due to a

1 lack of relief to take a meal period.

2 35. In addition, Plaintiffs and the Aggrieved Employees were not allowed to leave the
3 premises during rest breaks.

4 36. Despite the above-mentioned rest period violations, Defendants did not
5 compensate Plaintiffs, and on information and belief, did not pay Aggrieved Employees one
6 additional hour of pay at their regular rate as required by California law, including Labor Code
7 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
8 not authorized and permitted

9 37. Defendants also failed to provide accurate, lawful itemized wage statements to
10 Plaintiffs and the Aggrieved Employees in part because of the above specified violations. In
11 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
12 worked, including premiums due and owing for meal and rest period violations, gross pay and net
13 pay figures from Plaintiffs and the Aggrieved Employees' wage statements..

14 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
16 thereof for resignations without prior notice as the case may be) they had a duty to accurately
17 compensate Plaintiffs and Aggrieved Employees for all wages owed including overtime wages,
18 meal and rest period premiums, and Defendants had the financial ability to pay such
19 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
20 because of the above-specified violations. .

21 39. Upon information and belief, Defendants failed to keep accurate records pursuant
22 to Labor Code § 1174.5.

23 40. Upon information and belief, Defendants knew and or should have known that it is
24 improper to implement policies and commit unlawful acts such as:

- 25 a. failing to compensate Plaintiff and Class Members accurate overtime wages for
- 26 all hours worked;
- 27 b. failure to authorize and permit rest periods;
- 28 c. failure to provide meal periods;

- d. failing to provide accurate itemized wage statements; and
- e. failing to timely pay wages;

41. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted herein, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.*

42. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

43. On October 28, 2020, Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

44. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general.

45. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties an for which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint, including without limitation Labor Code section 201-204, 510, 512, 558, 226, 266.3, 226.7, 266.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

46. At all times relevant, Plaintiff and all other aggrieved employees regularly performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and

1 rest break requirements of the applicable IWC wage order and the Labor Code.

2 47. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
3 overtime wages owed as discussed above. Defendants also failed to accurately pay overtime
4 wages by failing to include bonuses earned into Plaintiff and Aggrieved Employees regular rates
5 of pay. Therefore, Defendants violated section 510, and 1194 by not compensating its Non-
6 Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours in a
7 work week (40). Section 510 of the Labor Code codifies the right to overtime compensation at the
8 rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8)
9 hours in a day or forty (40) hours in a work week and to overtime compensation twice the regular
10 rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
11 in a day on the seventh day of work in a particular work week.

12 48. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
13 timely, uninterrupted first and second meal periods and requiring unlawful on duty meal periods,
14 or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ
15 an employee for a work period of more than five (5) hours without providing a meal break of not
16 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An
17 employer may not employ an employee for a work period of more than ten (10) hours per day
18 without providing the employee with a second meal period of not less than thirty (30) minutes,
19 except that if the total hours worked is no more than twelve (12) hours, the second meal period
20 may be waived by mutual consent of the employer and the employee only if the first meal period
21 was not waived.

22 49. Defendants failed to provide Plaintiffs and all other aggrieved employees
23 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants
24 implemented and enforced policies of on duty meal period practices which required employees to
25 work during their meal periods, to forego their meal periods, and/or to return to work from meal
26 periods prior to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned
27 violations, Plaintiffs and all other aggrieved employees have been damaged in an amount
28 according to proof at time of trial.

1 50. Plaintiffs, and on information and belief, all aggrieved employees, were
2 systematically not permitted or authorized to take ten minute rest periods for every four hours
3 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
4 Plaintiffs and on information and belief, aggrieved employees, were not compensated with one
5 hour of wages for every day in which a rest period was missed or untimely as a result of
6 Defendants' policies, practices, or work demands. By failing to authorize and permit a ten-
7 minute rest period for every four hours or major fraction thereof worked per day by its Non-
8 Exempt Employees, and by failing to provide compensation for such non-provided or shortened
9 rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code
10 sections 226.7, 512 and the applicable IWC Wage Order.

11 51. At all relevant times, Defendants failed to accurately calculate bonuses earned by
12 Plaintiff and Aggrieved employees into their regular rates of pay for overtime purposes, resulting
13 in an inaccurate payment of overtime to Plaintiff and Class Members.

14 52. On information and belief, Defendants failed to allow or permit Plaintiff and
15 Aggrieved employees' to leave the premises during rest periods

16 53. On information and belief, Defendants also failed to timely pay wages upon
17 Plaintiff and Aggrieved employees' separation from Defendants' employ pursuant to Labor Code
18 §§ 201-204.

19 54. Labor Code § 204 requires an employer to make payable all wages mentioned in
20 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment twice during
21 each calendar month, on days designated in advance by the employer as the regular paydays. The
22 requirements of this section shall be deemed satisfied by the payment of wages for weekly,
23 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
24 following the close of the payroll period

25 55. During the relevant time period, Defendants failed to timely pay Plaintiff and
26 Aggrieved Employees for bonuses earned in violation of §204 as such payments were not made
27 during the course of the regular pay schedule and were made more than seven calendar days
28 following the close of the payroll period..

1 56. Labor Code §§201-202 requires an employer who discharges an employee to pay
2 compensation due and owing to said employee immediately upon discharge and that if an
3 employee voluntarily leaves his or her employment, his or her wages shall become due and
4 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
5 two (72) hours previous notice of his or her intention to quit, in which case the employee is
6 entitled to his or her wages on their last day of work.

7 57. Labor Code §203 provides that if an employer willfully fails to pay compensation
8 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
9 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

10 58. During the relevant time period, Defendants willfully failed and refused, and
11 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
12 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
13 leaving Defendants' employ. These wages include overtime wages and premium wages for meal
14 and rest periods.

15 59. Defendants also failed to provide accurate itemized wage statements which failed
16 to accurately all hours worked and failed to accurately identify the correct amount of pay.
17 Therefore, Plaintiff and Aggrieved employees have been injured as they were unable to determine
18 whether they had been paid correctly for all hours worked per pay period among other things
19 pursuant to Labor Code section 226(a).

20 60. Additionally, Defendants have no accurate records relating to aggrieved
21 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
22 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
23 maintain accurate records relating to hours worked daily in violation of Labor Code sections
24 1174(d), 1174.5.

25 61. Plaintiff and the Representative Aggrieved Employees are entitled to recover
26 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

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