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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 JACQUELYN CRANTON, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 GROSSMONT HOSPITAL
20 CORPORATION, a California Corporation;
21 and DOES 1 through 50, inclusive,

22 Defendants.

Case No. 37-2022-00024671-CU-OE-CTL

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, 221,
226(a), 226.7, 227.3, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

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

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 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 **THE PARTIES**

23 4. Defendant Grossmont Hospital Corporation (“DEFENDANT”) is a California
24 corporation that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT is located in La Mesa, California, United States. It is the largest
27 health care facility in East San Diego County with a service area covering 750 square miles. It
28

1 is owned by Grossmont Healthcare District, who has leased it to Sharp HealthCare since 1991.

2 6. PLAINTIFF has been employed by DEFENDANT in California since August of
3 2018 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
4 an hourly basis, and entitled to the legally required meal and rest periods and payment of
5 minimum and overtime wages due for all time worked.

6 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to herself
9 and all individuals who are or previously were employed DEFENDANT in California and
10 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
11 of September 23, 2020 until a date as determined by the Court (the "PAGA PERIOD").

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

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. PLAINTIFF and the AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a

1 condition of employment, required these employees to submit to mandatory temperature checks
2 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
3 timekeeping system for the workday. As a result, PLAINTIFF and the AGGRIEVED
4 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
5 by working without their time being correctly recorded and without compensation at the
6 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the
7 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
8 records.

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

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

28 14. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED

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

12 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
13 are also required from time to time to work in excess of four (4) hours without being provided
14 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
15 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
16 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
17 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
18 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
19 PLAINTIFF and the AGGRIEVED EMPLOYEES are also not provided with one hour wages
20 in lieu thereof. DEFENDANT failed to compensate PLAINTIFF and the AGGRIEVED
21 EMPLOYEES for their rest periods as required by the applicable Wage Order and Labor Code.
22 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
23 PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANT's failure to
24 provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all the legally required paid rest
25 periods is evidenced by DEFENDANT's business records. Additionally, the applicable
26 California Wage Order requires employers to provide employees with off-duty rest periods,
27 which the California Supreme Court defined as time during which an employee is relieved from
28 all work related duties and free from employer control. In so doing, the Court held that the

1 requirement under California law that employers authorize and permit all employees to take rest
2 period means that employers must relieve employees of all duties and relinquish control over
3 how employees spend their time which includes control over the locations where employees
4 may take their rest period. Employers cannot impose controls that prohibit an employee from
5 taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricts
6 PLAINTIFF and the AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful
7 based on DEFENDANT's rule which states PLAINTIFF and the AGGRIEVED EMPLOYEES
8 cannot leave the work premises during their rest period.

9 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
10 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
11 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
12 is required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked,
13 meaning the time during which an employee was subject to the control of an employer,
14 including all the time the employee was permitted or suffered to permit this work.
15 DEFENDANT requires these employees to work off the clock without paying them for all the
16 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
17 known that PLAINTIFF and the AGGRIEVED EMPLOYEES are under compensated for all
18 time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit time
19 worked by working without their time being accurately recorded and without compensation at
20 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
21 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
22 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
23 1197.1.

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

1 applicable hourly rates in effect during the pay period and the corresponding amount of time
2 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
3 DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all the
4 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
5 time provides PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which
6 violated Cal. Lab. Code § 226.

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

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

15 19. DEFENDANT from time to time fails to pay PLAINTIFF and the AGGRIEVED
16 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
17 Lab. Code § 204(d), including but not limited to the “Retro Pay Flat” wage payment.

18 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
19 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
20 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
21 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
22 underpaid sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of
23 pay.

24 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
25 employees be calculated by dividing the employee’s total wages, not including overtime
26 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
27 of employment.

28 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at

1 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
2 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
3 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
4 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
5 Code Section 246.

6 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
7 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
8 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
9 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
10 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
11 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

12 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
13 to collect or receive from an employee any part of wages theretofore paid by said employer to
14 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and the
15 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
16 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the deductions
17 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
18 fails to pay these employees all wages due at each applicable pay period and upon termination.

19 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
20 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
21 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging
22 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
23 are required to indemnify employees for all expenses incurred in the course and scope of their
24 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
25 her employee for all necessary expenditures or losses incurred by the employee in direct
26 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
27 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
28 believed them to be unlawful."

26. In the course of their employment PLAINTIFF and the AGGRIEVED EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES are required by DEFENDANT to use their personal cellular phones. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

JURISDICTION AND VENUE

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

29. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

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1 **FIRST CAUSE OF ACTION**

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

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

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

5 30. PLAINTIFF realleges and incorporates by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

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

17 32. PLAINTIFF, and such persons that may be added from time to time who
18 satisfy the requirements and exhaust the administrative procedures under the Private
19 Attorney General Act, brings this Representative Action on behalf of the State of California
20 with respect to herself and all individuals who are or previously were employed by
21 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
22 EMPLOYEES") during the time period of September 23, 2020 until a date as determined by
23 the Court (the "PAGA PERIOD").

24 33. On September 23, 2021, PLAINTIFF gave written notice by electronic mail to
25 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
26 employer of the specific provisions of this code alleged to have been violated as required by
27 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
28 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now

1 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
2 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
18 severally, as follows:

19 1. On behalf of the State of California and with respect to all AGGRIEVED
20 EMPLOYEES:

21 A) Recovery of civil penalties as prescribed by the Labor Code Private
22 Attorneys General Act of 2004; and,

23 B) An award of attorneys' fees and cost of suit, as allowable under the

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

1 law, including, but not limited to, pursuant to Labor Code §2699.

2 Dated: June 22, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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5 By: /s/ Nicholas De Blouw
6 Norman B. Blumenthal
7 Kyle R. Nordrehaug
8 Nicholas J. De Blouw

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Attorneys for Plaintiff