

1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackermann, CA Bar No. 229832
3 cja@ackermanntilajef.com
4 1180 South Beverly Drive, Suite 610
5 Los Angeles, California 90035
6 Phone: (310) 277-0614
7 Fax: (310) 277-0635

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/03/2021 at 10:10:50 AM
Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

6 **EMPLOYMENT RIGHTS LAW GROUP, APC.**
7 Amir H. Seyedfarshi, CA Bar No. 301656
8 amir@employmentrightslawgroup.com
9 1180 South Beverly Drive, Suite 610
10 Los Angeles, California 90035
11 Telephone: (424) 777-0964

12 *Attorneys for Plaintiff, the Class, and the Aggrieved Employees*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO**

15 CECELIA MADDEN, an individual, on
16 behalf of the State of California, as a private
17 attorney general, and on behalf of all others
18 similarly situated,

19 Plaintiff,

20 v.

21 GROSSMONT HOSPITAL
22 CORPORATION, a California Corporation,
23 doing business as SHARP HEALTHCARE
24 and DOES 1 to 50, inclusive,

25 Defendants.

CASE NO. 37-2021-00019533-CU-OE-CTL

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**

(1) **FAILURE TO PROVIDE TIMELY
AND DUTY-FREE REST PERIODS TO
AND/OR PAY REST BREAK PREMIUMS
(LABOR CODE § 226.7 AND SECTION 12
OF IWC WAGE ORDER NO. 5);**
(2) **FAILURE TO PROVIDE TIMELY
AND DUTY-FREE MEAL PERIODS TO
AND/OR PAY MEAL PERIOD
PREMIUMS (LABOR CODE §§ 226.7, 512,
AND SECTION 11 OF IWC WAGE
ORDER NO. 5);**
(3) **FAILURE TO PROVIDE
COMPLETE/ACCURATE WAGE
STATEMENTS IN VIOLATION OF
LABOR CODE § 226(a);**
(4) **UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204);**
(5) **PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2699, et seq., and 558).**

DEMAND FOR JURY TRIAL

1 Plaintiff Cecelia Madden (“Plaintiff”), on behalf of herself, the State of California as a
2 private attorney general, and all others similarly situated (hereinafter “Class Members” or
3 “aggrieved employees” as defined below), complains and alleges as follows:

4 **I. INTRODUCTION**

5 1. Plaintiff, a respiratory nurse therapist, brings this action on behalf of herself and all
6 others similarly situated, as a class action pursuant to California Code of Civil Procedure § 382
7 and as a PAGA representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the
8 California general public, against Defendant Grossmont Hospital Corporation dba Sharp
9 Healthcare (“Defendant”) and DOES 1 to 50 (collectively, “Defendants”) for Defendants’ (1)
10 failure to provide timely and off-duty rest breaks and/or pay missed rest break premiums; (2)
11 failure to provide timely and off-duty meal periods and/or pay missed meal period premiums; (3)
12 failure to provide complete and accurate wage statements within one year prior to the filing of this
13 Complaint; (4) unfair business practices based on the foregoing; and (5) PAGA and other
14 penalties based on the foregoing. As a result of the foregoing, Defendants have violated
15 California statutory laws as described below.

16 2. The “Class Period” is designated as the period from four years prior to the filing of
17 this action through the date that a class is certified in this case. The PAGA Period is the period
18 from February 16, 2020 and ongoing. Defendants’ violations of California’s wage and hour laws
19 and unfair competition laws, as described more fully below, have been ongoing throughout the
20 Class Period and throughout the PAGA period and are ongoing.

21 **II. JURISDICTION AND VENUE**

22 3. This Court has subject matter jurisdiction over any and all causes of action
23 asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of
24 Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
25 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
26 arises under the laws of the State of California or is subject to adjudication in the courts of the
27 State of California.

28 4. This Court has personal jurisdiction over Defendants because Defendants have

caused injuries in the County of San Diego and State of California through their acts, and by their violation of the California Labor Code and California state common law.

5. Venue as to Defendants is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendants operate within California and do business within San Diego County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants' employees within San Diego County.

6. Further, this action is not amenable to federal jurisdiction pursuant to 28 U.S.C. §1332, because the aggregate amount in controversy for Plaintiff and the Class Members, including attorneys' fees, is significantly less than \$5,000,000.

III. THE PARTIES

A. PLAINTIFF

7. Plaintiff Cecelia Madden is a citizen of California, a resident of San Diego County, and has worked for Defendants since 2006 in San Diego County during the Class Period and the PAGA Period. Specifically, Plaintiff has been employed by Defendants as an hourly, nonexempt employee since 2006 with the job title of respiratory nurse therapist.

8. Plaintiff represents the state of California as well as a group of aggrieved employees defined as: all persons, including the Plaintiff, who are or were employed by Grossmont Hospital Corporation dba Sharp Healthcare, or their predecessor or merged entities (collectively, "Defendants") in California, who were classified as non-exempt nurses, or respiratory therapists, and who worked at least one shift for Defendants that was longer than 3.5 hours at any time from February 16, 2020 and ongoing ("aggrieved employees").

9. Plaintiff also seeks to represent a class of employees defined as: all persons, including the Plaintiff, who are or were employed by Grossmont Hospital Corporation dba Sharp Healthcare (collectively, "Defendant") or its predecessor or merged entities in California who were classified as non-exempt respiratory therapist nurses, and who worked at least one shift at for Defendant that was longer than 3.5 hours at any time from four years ago through the date of certification (the "Class" or "Class Members").

10. Plaintiff, Class Members, and all aggrieved employees at all times pertinent

1 hereto, are, or were, employees of Defendants in California.

2 11. Upon information and belief, Plaintiff, Class Members, and the aggrieved
3 employees are covered by California Industrial Welfare Commission Occupational Wage Order
4 No. 5-2001, since hospital workers are covered by that wage order.

5 **B. DEFENDANTS**

6 12. Defendant Grossmont Hospital Corporation is a California Corporation that owns
7 and operates Sharp Healthcare in San Diego, California. Grossmont Hospital Corporation dba
8 Sharp Healthcare employed Plaintiff, Class Members, and the aggrieved employees within
9 California. Grossmont Hospital Corporation dba Sharp Healthcare has done and does business
10 throughout the State of California including in San Diego County.

11 13. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
13 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
14 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
15 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
16 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
17 capacities of the Defendants designated hereinafter as DOES when such identities become
18 known.

19 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
20 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
21 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
22 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
23 employer and/or joint employer of Plaintiff and the other aggrieved employees.

24 **IV. FACTUAL BACKGROUND**

25 15. Plaintiff, Class Members, and the aggrieved employees who are and were
26 respiratory therapist nurses who worked at Defendants' Hospital in San Diego, California are, and
27 were at all times pertinent hereto, employees by Defendants.

28 16. Plaintiff, Class Members, and the aggrieved employees consistently worked shifts

1 more than four (4) hours or a major fraction thereof, including shifts in excess of eight (8) hours.

2 17. Under Section 12 of IWC Wage Order 5-2001 an employer must authorize and
3 permit all employees to take ten (10) minute duty free rest periods for every major fraction of four
4 (4) hours worked. Labor Code § 226.7 provides “an employer shall not require an employee to
5 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
6 applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). *See*
7 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest
8 periods employers must relieve employees of all duties and relinquish control over how
9 employees spend their time.”).

10 18. At all times pertinent hereto, and throughout the Class Period and the PAGA
11 Period, Defendants failed to promulgate a lawful rest policy that informed Plaintiff, the Class
12 Members, and all aggrieved employees of their right to take duty-free rest periods for shifts that
13 were a major fraction of a four (4) hour work period and/or to make compliant rest breaks
14 available to these employees. Instead, Plaintiff, Class Members, and Aggrieved Employees were
15 required to carry a phone at all times, including during breaks, and to respond to emergencies
16 during both lunches and rest break.

17 19. In *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), the California
18 Supreme Court held that ABM’s on-call policy of requiring security guards to keep their radios
19 and pagers on at all times, and to remain vigilant and respond when needs arise, including during
20 rest breaks, violated its duty to provide duty-free rest breaks as required by § 226.7 and § 12 of
21 the applicable Wage Order. *Id.* at 260-61, 270.¹ With strong implications for the issue here, the
22 Court declared “. . . one cannot square the practice of compelling employees to remain at the
23 ready, *tethered by time and policy to particular locations or communication devices*, with the
24 requirement to relieve employees of all work duties and employer control during 10-minute rest
25 breaks.” *Augustus*, 2 Cal. 5th at 269 (emphasis added). Defendant’s on-premises rest period
26 policy tethers employees to their devices expressly and more directly than the on-call rule which

27 ¹ Notably, the wage order at issue in *Augustus*, IWC Wage Order No. 4-2001 is the same wage order at issue in the
28 immediate action, The California Supreme Court in *Augustus* also noted that IWC wage order provisions are
interpreted liberally to effectuate the purpose of the Legislature and IWC, which is the protection of employees.
Augustus, 2 Cal. 5th at 262.

1 as a practical matter disallowed a walk “five minutes out, five minutes back” but—unlike
2 Defendant’s policy—did not completely disallow employees from venturing outside and off-
3 premises. Imposing greater control over class members during the rest periods than the on-call
4 rule, Defendant’s rest break policy is more clearly unlawful. Moreover, the Court’s use of the
5 disjunctive in *Augustus*—disapproving a rest break policy either requiring an employee to remain
6 tethered during rest breaks to particular communication devices *or* to particular locations—is
7 strong indication that Defendant’s policy is unlawful.

8 20. Defendants’ own policy of requiring employees to be on-call during breaks to
9 respond to emergencies, constitutes control over its nurses and respiratory therapists such that
10 their rest breaks are not duty-free. See *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968
11 (1995) and *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000), holding that California employers
12 exercise sufficient “control” over workers such that they are “on-duty” and must be paid for their
13 “hours worked” for all time during which the employer merely requires them to remain on its
14 premises, including for such time associated with meal breaks or during travel time on a company
15 bus, without any additional job duties. By way of background, the numerous IWC Wage Orders,
16 including Wage Order No. 5, all require California employers to pay employees no less than
17 minimum wage for all hours worked. See *e.g.*, IWC Wage Order No. 4, section 4(B). The phrase
18 “hours worked” is defined as “the time during which an employee is subject to the control of an
19 employer and includes all the time the employee is suffered or permitted to work, whether or not
20 required to do so.” *Id.*, section 2(G). The California Court of Appeals has held that an employer’s
21 policy of requiring an employee to remain on premises for lunch periods transforms what would
22 otherwise be a duty-free, unpaid 30- minute meal period (*see* Section 11 of the various IWC
23 Wage Orders) into paid, on-duty time that counts as “hours worked” that is subject to the
24 employer’s control for purposes of the Wage Order. See *Bono Enterprises, Inc. v. Bradshaw*, 32
25 Cal.App.4th 968, 977 (1995).

26 21. In *Bono Enterprises*, where employees at a manufacturing plant were required to
27 remain on premises during their 30-minute lunch break, during which time they were relieved of
28 all duties and permitted to eat or relax at the employer’s on-site cafeteria, the Court of Appeals

1 upheld the Labor Commissioner’s interpretation of IWC Order 1-89 (the predecessor order to
2 IWC Wage Order No. 1-2001), that employees were entitled to compensation for any such meal
3 period during which they were restricted to the employer’s premises. *Id.* at 977. The Court
4 noted: “When an employer directs, commands or restrains an employee from leaving the
5 workplace during his or her lunch hour and thus prevents the employee from using the time
6 effectively for his or her own purposes, ***that employee remains subject to the employer’s control.***
7 According to IWC Order 1-89, the employee must be paid.” *See Bono Enterprises*, 32 Cal. App.
8 4th at 977 (emphasis added).²

9 22. The *Bono* Court’s interpretation of “hours worked” was approved by the California
10 Supreme Court in *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000) (agricultural employees
11 were subject to employer control during time spent riding to and from fields when required to ride
12 in employer provided buses and thus such time was compensable under the applicable IWC Wage
13 Order). The California Supreme Court there noted that: “The two phrases [in Section 2(G) of the
14 Wage Order’s definition of “hours worked”] – “time during which an employee is subject to the
15 control of an employer” and “time the employee is suffered or permitted to work, whether or not
16 required to do so”—can also be interpreted as independent factors, each of which defines whether
17 certain time spent is compensable as “hours worked”. Thus, an employee who is subject to an
18 employer’s control does not have to be working during that time to be compensated under Wage
19 Order 14-80 [internal citation to *Bono* omitted].” *Morillion*, 22 Cal.4th at 582. Based on the
20 foregoing, California’s Department of Labor Standards Enforcement (“DLSE”) also has
21 concluded that “...employees who were not paid for meal breaks during which they were
22 prohibited from leaving the employer’s premises, notwithstanding the fact that they were relieved
23 from all duty during those meal periods, are entitled to compensation for their unpaid meal
24 periods.” *See* DLSE Opinion letter, Jan. 12, 2001.³ That employees’ mandatory on-premises meal

25 ² *See also Brinker Restaurant Corp., v. Sup. Ct.*, 53 Cal. 4th 1004 (Cal. 2012) (agreeing with DLSE Opinion Letter
26 No. 1988.01.05, that states, “The Division has historically taken the position that unless employees are relieved of all
27 duties and are free to leave the premises, the meal period is considered hours worked.”); *Aguilar v. Association for*
28 *Retarded Citizens*, 234 Cal.App.3d 21, 30 (1991) (employees should be compensated for the time they spend sleeping
while on the employer’s premises, even though they performed no work then).

³ DLSE opinion letters can be found here: <https://www.dir.ca.gov/dlse/OpinionLetters-bySubject.htm>, including the
cited letter: <https://www.dir.ca.gov/dlse/opinions/2001-01-12.pdf> (both links last checked on 7/9/19).

1 break time is considered “hours worked” that is subject to employer control and thus
2 compensable weighs heavily in favor of a reading of *Augustus*, that on-premises rest breaks are
3 also subject to employer control.

4 23. The California Supreme Court’s recent decision in *Frlekin v. Apple Inc.*, 8 Cal. 5th
5 1038 (Feb. 13, 2020), by its own logic, also indicates that an on-premises and/or on-call rest
6 break policy does not pass muster under California law. The Court in *Frlekin* reaffirmed its
7 holding in *Morillion* that “[t]he level of the employer’s control over its employees, rather than
8 the mere fact that the employer requires the employees’ activity, is determinative’ concerning
9 whether an activity is compensable under the Wage Order’s ‘hours worked’ control clause.
10 *Frlekin v. Apple Inc.*, 8 Cal. 5th at 1056, *quoting Morillion*, 22 Cal. 4th at 587. By that measure,
11 the time spent by employees undergoing theft-prevention-related bag searches after the end of
12 their shifts was subject to the employer’s control and counted as “hours worked” and
13 compensable. *Id.* at 1056-57.⁴ Again embracing *Bono*, the Court stated: “[w]hen an employer
14 directs, commands *or restrains an employee from leaving the work place* . . . and thus prevents
15 the employee from using the time effectively for his or her own purposes, that employee remains
16 subject to the employer’s control [and a]ccording to [the applicable Wage Order], that employee
17 must be paid.” *Frlekin*, 8 Cal. 5th at 1047, *quoting Bono*, 32 Cal. App. 4th at 975. (Emphasis
18 added). Time spent by Defendant’s employees who are confined to the premises during rest
19 periods is no less subject to employer control than that spent by Apple employees after their shifts
20 while and/or who are on-call and must respond to calls and texts, confined to the location for on-
21 premises exit searches. Although the issue in *Frlekin* was compensability of security check time,
22 as opposed to whether there was sufficient “control” during a break to trigger the employer’s
23 obligation to make a premium payment under Labor Code § 226.7 for an on-duty rest break, the
24 logic underlying the *Frlekin* decision applies with equal and inexorable force to the rest break
25 control analysis here.

26 24. In summary, the California appellate courts in *Bono*, *Morillion*, and *Frlekin* all

27 _____
28 ⁴ The Court adhered to its practice of construing wage orders “so as to promote employee protection”, emphasizing
that “‘wage orders are the type of remedial legislation that must be liberally construed in a manner that serves its
remedial purposes’ of protecting and benefiting employees.” *Id.* at 1045-46 (citations omitted).

1 support the DLSE's and Plaintiff's position here that policies unconditionally requiring
2 employees to remain on-call during rest breaks are unlawful. *See Bono*, 32 Cal. App. 4th at 975
3 ("When an employer directs, commands, or restrains an employee from leaving the work place
4 during his or her lunch hour and thus prevents the employee from using the time effectively for
5 his or her own purposes, that employee remains subject to the employer's control [and] must be
6 paid.")⁵; *Morillion*, 22 Cal. 4th at 582 (holding that agricultural employees must be paid for
7 mandatory time spent riding to and from fields on employer buses, because "an employee who is
8 subject to an employer's control does not have to be working during that time to be compensated
9 under [the applicable Wage Order.]"); *Frlekin*, 8 Cal. 5th at 1056 (holding that employer's
10 requirement of on-premises exit searches, which were "enforced through threat of discipline[,]"
11 are compensable time under the Wage Order's "hours worked" control clause). No California
12 Court of Appeals is contrary to these decisions.

13 25. As a result of Defendants' unlawful on-call rest break policy, Defendants did not
14 permit Plaintiff, the Class Members, and/ or the aggrieved employees to be free from duties
15 during their rest periods as required by Labor Code § 226.7 and Wage Order 5-2001. *Augustus*, 2
16 Cal. 5th at 269. In fact, Defendants required that Plaintiff, the Class Members, and the aggrieved
17 employees remain on-duty through their rest periods. Accordingly, as a result of its unlawful,
18 uniform, faulty rest period policies, Defendants regularly and consistently failed to authorize and
19 permit Plaintiff, the Class Members, and all aggrieved employees to take Labor Code and Wage
20 Order compliant rest periods.

21 26. The *Brinker* Court explained in the context of rest breaks that employer liability
22 attaches from adopting an unlawful policy:

23 An employer is required to authorize and permit the amount of rest break time called
24 for under the wage order for its industry. If it does not—if, for example, it adopts a
25 uniform policy authorizing and permitting only one rest break for employees working a
seven-hour shift when two are required—***it has violated the wage order and is liable.***

26 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

27 ⁵ That employees' mandatory on-premises meal break time is considered "hours worked" that is subject to employer
28 control, and thus compensable pursuant to *Bono*, weighs heavily against a reading of *Augustus* that on-premises rest
breaks are somehow different and not subject to employer control, especially since the *Augustus* court stated that
employer's responsibilities relating to providing duty-free meal breaks and rest breaks are the same. *Augustus*, 2 Cal.
5th at 265.

1 27. Following *Brinker*, the Courts of Appeal have confirmed that liability for not
2 providing compliant rest or meal breaks arises when an employer adopts a uniform policy that
3 fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the
4 California Court of Appeal applied *Brinker*: “In *Faulkinbury I*, we concluded that even if
5 [defendant]’s on-duty meal break policy was unlawful, [defendant] would be liable only when it
6 actually failed to provide a required off-duty meal break. *Brinker* leads us now to conclude
7 [defendant] would be liable upon a determination that [defendant]’s uniform on-duty meal break
8 policy was unlawful.” (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220 The
9 Court further explained: “the employer’s liability arises by adopting a uniform policy that violates
10 the wage and hour laws. Whether or not the employee was able to take the required break goes to
11 damages...” (*Ibid.* [citations omitted]; *see also Benton v. Telecom Network Specialists, Inc.*
12 (2013) 220 Cal. App. 4th 701, 728.)

13 28. Since Defendants did not offer Plaintiff, the Class Members, and the aggrieved
14 employees the opportunity to receive a compliant off-duty rest period, “the court may not
15 conclude employees voluntarily chose to skip...breaks.” *Alberts v. Aurora Behavioral Health*
16 *Care*, 241 Cal. App. 4th 388, 410 (2015) (“[i]f an employer fails to provide legally compliant
17 meal or rest breaks, the court may not conclude employees voluntarily chose to skip those
18 breaks.”); *accord Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that
19 was required by law but never authorized; if a break is not authorized, an employee has no
20 opportunity to decline to take it.”).

21 29. Further, even an employer who maintains an otherwise compliant rest period
22 policy, “reminded their employees of their availability—and the importance—of taking breaks on
23 a daily basis, and even went so far as to conduct regular audits to ensure that employees were
24 being offered rest breaks” will still be liable for rest period violations if the employees were
25 provided non-compliant rest periods. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS
26 66842 * (E.D. Cal. May 19, 2016) *aff’d Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016
27 WL 4440966, at *11 (E.D. Cal. Aug. 22, 2016); *rev. denied* by 9th Cir. Case No. 0:16-23f-80120
28 (9th Cir. Nov. 16, 2016).

1 30. Labor Code § 226.7 provides “an employer shall not require an employee to work
2 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
3 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, under
4 IWC Wage Order 5-2001 prohibits an employer from “employ[ing] any person for a work period
5 of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order
6 5-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of
7 pay at the employee’s regular rate of compensation for each workday that the meal period is not
8 provided. Accordingly, for each day that Plaintiff, the Aggrieved Employees, and the Class
9 Members did not receive compliant meal periods, they are entitled to receive meal period
10 premiums pursuant to Labor Code § 226.7 and Wage Order 5-2001.

11 31. Plaintiff, the Class Members, and all aggrieved employees were required to work
12 in 8-hour long shifts, often up to 12 hours, and during this time, Plaintiff, the Class Members, and
13 all aggrieved employees were required to check out a phone at the beginning of their shifts.
14 Plaintiff, the Class Members, and all aggrieved employees were required to carry the phone with
15 themselves throughout their shifts including their meal and rest breaks. Each phone was assigned
16 to an employee and employees were required to carry the phone during their lunch and rest
17 breaks. In March 2021, Defendant issued a new policy for the first time requiring all employees,
18 including Plaintiff, the Class Members, and all aggrieved employees to turn in the devices during
19 breaks.

20 32. In addition, during the Class Period and the PAGA Period, Plaintiff, the Class
21 Members, and all aggrieved employees were not compensated with one (1) hours’ worth of pay at
22 their regular rate of compensation when they were not provided with a compliant rest period or a
23 compliant meal period or at the proper rate based upon Defendants’ unlawful compensation
24 policies detailed above.

25 33. Labor Code § 226(a)(1), (2), (5) and (9), requires employers semimonthly or at the
26 time or each payment of wages, to furnish each of his or her employees, an accurate itemized
27 statement in writing showing the gross wages earned, the total hours worked by the employee, the
28 net wages earned, as well as all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee.

2 34. From at least February 16, 2020 through the present, Defendants knowingly and
3 intentionally failed to issue accurate and complete itemized wage statements in writing to
4 Plaintiff, the Class Members, and all aggrieved employees that accurately indicate the gross
5 wages earned, total hours worked by the employee, the net wages earned, as well as all applicable
6 hourly rates in effect during the pay period and the corresponding number of hours worked at
7 each hourly rate by the employee because those wage statements did not include compensation
8 for rest break premiums and meal break premiums, as required by Cal. Labor Code §§226.7.

9 35. Due to Defendants' failure to provide employees with lawful off-duty rest and
10 meal periods, and to pay meal and rest break premiums, the wage statements issued by the
11 Defendants to Plaintiff, the Class Members and the aggrieved employees further do not indicate
12 the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at
14 each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Thus, Plaintiff is an
15 aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code
16 §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Class, and all aggrieved employees.

17 36. Plaintiff fully and completely exhausted her administrative remedies under PAGA
18 prior to proceeding with this action. On February 16, 2020, Plaintiff filed her PAGA Notice
19 online with the Labor Workforce Development Agency ("LWDA"), sent a letter by certified mail
20 to Defendants setting forth the facts and theories of the violations alleged against Defendants, as
21 prescribed by Labor Code § 2698 *et seq* and paid the requested \$75 fee. Pursuant to Labor Code
22 § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to
23 investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff
24 is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

25 **III. CLASS ACTION ALLEGATIONS**

26 37. Plaintiff brings this action, on behalf of herself and all others similarly situated, as
27 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
28 composed of and defined as:

1 all persons who are or were employed as Respiratory Nurse Therapist by
2 Grossmont Hospital Corporation or its predecessor or merged entities
3 (“Defendant”) in the State of California, who are or were classified as non-
4 exempt, and who worked at least one shift, for Defendant that was longer
than 3.5 hours at any time from four years prior to the filing of this
Complaint and ongoing.

5 38. This action has been brought and may properly be maintained as a class action
6 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation, the proposed class is easily ascertainable, and Plaintiff, is a proper representative of the
8 Class:

9 a. Numerosity: The potential members of the Class as defined are so
10 numerous that joinder of all the members of the Class is impracticable. While the precise number
11 of Class Members has not been determined at this time, Plaintiff is informed and believe that
12 Defendants has, on average, during the Class Period employed over 100 Class Members in
13 California subject to Defendants’ on-duty rest period policy. Due to employee turnover, the total
14 number of Class Members who are no longer employed by Defendants is estimated to be more
15 than 150. The Class Members are dispersed throughout California. Joinder of all members of the
16 proposed classes is therefore not practicable.

17 b. Commonality: There are questions of law and fact common to Plaintiff and
18 the Class that predominate over any questions affecting only individual members of the Class.
19 These common questions of law and fact include, without limitation:

20 i. Whether Defendants violated Labor Code section 226.7 and Section 12 of
21 Wage Order 5-2001 by not relieving the Class Members of all duties during their statutorily
22 mandated rest periods;

23 ii. Whether Defendants violated section 226.7 and Section 12 of Wage Order
24 5-2001 by promulgating a uniform on-premises rest break policy applicable to Class Members;

25 iii. Whether Defendants violated Labor Code section 226.7 failing to pay one
26 hour of premium pay to each member of the Class for each day that an off-duty rest break was not
27 provided in California during the Class Period;

28 iv. Whether Defendants violated Labor Code section 226.7, 512, and Section 11

1 IWC Wage Order 5-2001 by not relieving the Class Members of all duties during the statutorily
2 mandated meal periods;

3 v. Whether Defendants violated Labor Code section 226.7 failing to pay one
4 hour of premium pay to each member of the Class for each day that an off-duty meal period was not
5 provided in California during the Class Period;

6 vi. Whether Defendants failed to provide Plaintiff and the members of the
7 Class complete wage statements with information included about their total hours worked, the
8 gross wages earned, the net wages paid and premium payments for non-compliant rest periods,
9 and the name and address of the legal entity and during each pay period in violation of Labor
10 Code Section 226(a) and 226.3;

11 vii. Whether Defendants failed to pay all wages owed to Plaintiff and the
12 members of the Waiting Time Penalty Class upon termination in violation of Cal. Labor Code
13 §§201-203.

14 viii. Whether Defendants engaged in an unfair practice and violated section
15 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
16 Class with rest periods free of all duties;

17 ix. Whether Defendants engaged in an unfair practice and violated section
18 17200 et seq. of the California Business and Professions Code by failing to pay rest break
19 premiums for all days on which only on-duty rest breaks were taken by members of the Class
20 pursuant to Defendant's on premises rest break policy in violation of Section 12 of IWC Wage
21 Order No. 5;

22 x. Whether Plaintiff and the Class are entitled to restitution under Business
23 and Professions Code § 17200 et seq.;

24 xi. The proper formula(s) for calculating damages, interest, and restitution
25 owed to Plaintiff and the Class Members; and

26 xii. The nature and extent of class-wide damages.

27 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
28 Plaintiff and Class Members sustained injuries and damages, and were deprived of property

1 rightly belonging to them, arising out of and caused by Defendants' common course of conduct in
2 violation of law as alleged herein, in similar ways and for the same types of expenses.

3 d. Adequacy of Representation: Plaintiff is a member of the Class and will
4 fairly and adequately represent and protect the interests of the Class and Class Members.
5 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who
6 represents Plaintiff are competent and experienced in litigating wage and hour class actions,
7 including numerous cases virtually identical to this one, and other employment class and PAGA
8 actions, and will devote sufficient time and resources to the case and otherwise adequately
9 represent the Class and Class Members.

10 e. Superiority of Class Action: A class action is superior to other available
11 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
12 Members is not practicable, and questions of law and fact common to the Class predominate over
13 any questions affecting only individual members of the Class. Each Class Member has been
14 damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or
15 practices as described herein. Certification of this case as a class action will allow those similarly
16 situated persons to litigate their claims in the manner that is most efficient and economical for the
17 parties and the judicial system. Certifying this case as a class action is superior because it allows
18 for efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining
19 its unlawful compensation policies and will thereby effectuate California's strong public policy of
20 protecting employees from deprivation or offsetting of compensation earned in their employment.
21 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
22 or most Class Members to bring individual actions to recover monies unlawfully withheld from
23 their lawful compensation due from Defendants, due to the relatively small amounts of such
24 individual recoveries relative to the costs and burdens of litigation.

25 ///

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE OFF-DUTY REST PERIODS
AND PAY MISSED REST PERIOD PREMIUMS
[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 5-2001]
On behalf of Plaintiff and the Class Against All Defendants

39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

40. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, or the class is certified.

41. Under IWC Wage Order 5-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” By operation of law, Defendants had a duty to provide Plaintiff and Class with rest periods completely free of all duties, and enable Plaintiff and the Class to leave the worksite during those rest periods if they so desired. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273. But in violation of §226.7, and Wage Order 5-2001, Defendants did not provide Plaintiff, the Class Members, and the Aggrieved Employees with rest periods completely free of all duties, nor did Defendants enable Plaintiff, the Aggrieved Employees, or the Class Members to ignore communications on their employer-issued devices or check them in during breaks.

42. By way of their policies requiring employees to stay on-duty during their shifts, and stay on-call during their rest periods, Defendants failed to provide Plaintiff and the Class with

1 duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours
2 worked. Specifically, Defendant failed to have a lawful rest period policy in place that informed
3 Plaintiff and the Class of their right to take duty-free rest periods for shifts that were a major
4 fraction of a four (4) hour work period and to make duty-free rest breaks available to these
5 employees. Further, Defendants did not permit Plaintiff or the Class to check in or ignore their
6 devices during rest periods as required by Labor Code § 226.7 and Wage Order 5-2001 and in
7 violation of *Augustus*, 2 Cal. 5th at 269. Accordingly, as a result of its on-duty rest period
8 policies, Defendants regularly and consistently failed to authorize and permit Plaintiff and the
9 Class to take compliant off duty rest periods.

10 43. In addition to failing to authorize and permit compliant rest periods, and instead
11 requiring on-duty rest breaks, Plaintiff and the Class were not compensated with one (1) hours'
12 worth of pay at their regular rate of compensation when they were not provided with a compliant
13 rest period in accordance with Labor Code § 226.7(b) and IWC Wage Order 5-2001 Section
14 12(B).

15 44. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not
16 provided off duty rest periods, and are entitled to recovery under Cal. Labor Code §226.7 in the
17 amount of one additional hour of pay at the employee's regular rate of compensation for each
18 work period during each day in which Defendants failed to provide duty-free rest periods as
19 required by California law.

20 **SECOND CAUSE OF ACTION**
21 **FAILURE TO PROVIDE TIMELY DUTY-FREE MEAL BREAKS**
22 **AND PAY MISSED MEAL BREAK PREMIUMS**
23 **[Cal. Labor Code §§ 226.7, 512; Section 11 Of IWC Wage Order No. 5]**
24 **On Behalf of Plaintiff and the Class Against All Defendants**

25 45. Plaintiff incorporates all paragraphs above as though fully set forth herein.

26 46. At all times relevant herein, Section 11050 of 8 California Code of Regulations
27 provided in relevant part:
28

A. No employer shall employ any person for a work period of more than five
(5) hours without a meal period of not less than 30 minutes, except that when a
work period of not more than six (6) hours will complete the day's work the meal
period may be waived by mutual consent of the employer and the employee.

1 B. An employer may not employ an employee for a work period of more than
2 ten (10) hours per day without providing the employee with a second meal period
3 of not less than 30 minutes, except that if the total hours worked is no more than
4 12 hours, the second meal period may be waived by mutual consent of the
5 employer and the employee only if the first meal period was not waived.

6 C. Unless the employee is relieved of all duty during a 30-minute meal period,
7 the meal period shall be considered an "on duty" meal period and counted as time
8 worked. An "on duty" meal period shall be permitted only when the nature of the
9 work prevents an employee from being relieved of all duty and when by written
10 agreement between the parties an on-the-job paid meal period is agreed to. The
11 written agreement shall state that the employee may, in writing, revoke the
12 agreement at any time.

13 D. If an employer fails to provide an employee a meal period in accordance
14 with the applicable provisions of this order, the employer shall pay the employee
15 one (1) hour of pay at the employee's regular rate of compensation for each
16 workday that the meal period is not provided.

17 47. Likewise, California Labor Code Section 512(a): An employer may not employ an
18 employee for a work period of more than five hours per day without providing the employee with
19 a meal period of not less than 30 minutes, except that if the total work period per day of the
20 employee is no more than six hours, the meal period may be waived by mutual consent of both
21 the employer and employee. An employer may not employ an employee for a work period of
22 more than 10 hours per day without providing the employee with a second meal period of not less
23 than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal
24 period may be waived by mutual consent of the employer and the employee only if the first meal
25 period was not waived.

26 48. California Labor Code Section 226.7 requires an employer to pay an additional
27 hour of compensation for each meal period the employer fails to provide in accordance with the
28 applicable statute or Industrial Welfare Commission Wage Order.

49. During Plaintiff's employment, Defendants failed to provide Plaintiff and other
members of the Class with meal periods in accordance with the applicable Industrial Welfare
Commission Wage Order and California Labor Code Sections 226.7 and 512. Specifically,
Defendants violated Labor Code § 512 and IWC Wage Order 5-2001 § 11 by requiring Plaintiff
and the Class Members to take their meal periods and on-call, and thus were not relieved of all

1 duties during their meal periods. Plaintiff and the Class Members were required to remain on-duty
2 during their meal breaks; specifically, they were texted to their devices issued by the hospital.

3 50. Pursuant to California Labor Code Section 226.7, Plaintiff and other members of
4 the Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal
5 period, in a sum to be proven at trial.

6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**
8 **[Cal. Labor Code §§ 226 and 226.3]**
9 **On Behalf of Plaintiff and Subclass Members Against All Defendants**

10 51. Plaintiff re-alleges and incorporates by reference each and every allegation set
11 forth in the preceding paragraphs.

12 52. The actionable period for this cause of action is one year prior to the filing of this
13 Complaint through the present, and on-going until the violations are corrected, or the subclass is
14 certified.

15 53. Section 226(a) of the California Labor Code provides, in relevant part:
16 Every employer shall.... furnish each of his or her employees...an accurate
17 statement in writing showing (1) gross wages earned, (2) total hours worked by the
18 employee, except for any employee whose compensation is solely based in a salary
19 and who is exempt from payment of overtime under subdivision (a) of Section 515
20 or any applicable order of the Industrial Welfare Commission, (3) the number of
21 piece-rate units earned, and any applicable piece rate if the employee is paid on a
22 piece-rate basis, (4) all deductions, provided that all –deductions made on written
orders of the employee may be aggregated and shown as one item, (5) net wages
earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and only the last four digits of his or her social security
number or an employee identification number other than a social security number,
(8) the name and address of the legal entity that is the employer, and (9) all
applicable hourly rates in effect during the pay period and the corresponding
number of the hours worked at each hourly rate by the employee...

23 54. Section 226(e) provides that an employee is entitled to recover \$50 for initial pay
24 period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to
25 exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in
26 which the employer fails to provide accurate itemized statements to the employee causing the
27 employee to suffer injury.

28 55. Due to Defendants' failure to provide employees with lawful off-duty rest periods,

1 off-duty meal periods, or pay Plaintiff and the Class Members rest period premiums and meal
2 period premiums, as detailed above, the wage statements issued by Defendants do not indicate the
3 correct amount of gross wages earned, total hours worked, net wages earned, or the applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at
5 each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

6 56. Defendants' failure to provide Plaintiff and Class Members with accurate itemized
7 wage statements during the Class Period has caused Plaintiff and Class Members who worked
8 within the actionable period for this cause of action (the "Subclass Members") to incur economic
9 damages in that they were not aware that they were owed and not paid compensation for their
10 time spent on statutory rest breaks. The failure to include meal and rest break premiums on wage
11 statements gives rise to a claim under Labor Code section 226. *See Brewer v. Gen. Nutrition*
12 *Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant's motion for
13 summary judgment because "the premium payments due under section 226.7 are to be considered
14 "wages" for purposes of sections 203 and 226."]; *see also Parson v. Golden State FC, LLC*, 2016
15 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (a failure to pay
16 rest period premiums can support claims under Labor Code §§ 203 and 204);⁶ Cal. Labor Code §
17 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section
18 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the
19 gross or net wages earned by the employee during the pay period).

20 57. As a result of Defendants' failure to issue accurate and complete itemized wage
21 statements to Plaintiff and Class Members in violation of section 226(a) of the California Labor
22 Code, Plaintiff Class Members who worked for Defendants within the one year preceding the
23 filing of this Complaint are each entitled to recover an initial penalty of \$50, and subsequent
24 penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 for each
25 member of the Class, including Plaintiff, from Defendants pursuant to section 226(e) of the
26 California Labor Code.

27 _____
28 ⁶ The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

FOURTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
[Bus. & Prof. Code §§ 17200]
On Behalf of Plaintiff and the Class Against All Defendants

58. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

59. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

60. Under section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, and/or the class is certified.

61. Section 90.5(a) of the Labor Code states that it is the public policy of California to enforce vigorously minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

62. As a direct and proximate result of Defendants’ unlawful business practices, Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from its unlawful, unfair, and/or fraudulent acts and practices.

63. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code § 17203 and 17208 for all unpaid meal and rest break premium wages due and interest thereon, from at least four years prior to the filing of this Complaint through the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

64. Through its action alleged herein, Defendants have engaged in unfair competition within the meaning of section 17200 of the California Business & Professions Code, because Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by wrongfully denying them wages and/or penalties due for rest period premiums and meal period premiums and therefore was substantially injurious to Plaintiff and the Class Members.

65. Defendants engaged in unfair competition in violation of Section 17200 *et seq.* of the California Business & Professions Code by violating section 226.7 of the California Labor Code, and Sections 11 and 12 of the Wage Order No. 5-2001.

66. Defendants' course of conduct, act, and practice in violation of the California laws mentioned above constitute independent violations of Sections 17200 *et seq.* of the California Business & Professions Code.

67. Plaintiff and similarly situated Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

68. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendants. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

FIFTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.* FOR
VIOLATIONS OF LABOR CODE §§201- 203, 226, 226.3, 226.7, 512, 1198; and Wage
Order 5-2001

**On Behalf of Plaintiff and All Aggrieved Employees Against Defendant Grossmont
Hospital Corporation**

69. Plaintiff, on behalf of herself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

70. All administrative prerequisites to the filing of this PAGA action have been satisfied, including sending in a timely PAGA letter and paying the required \$75 fee.

71. Based on the above allegations incorporated by reference, Grossmont Hospital

1 Corporation violated Labor Code §§ 201- 203, 226, 226.3, 226.7, 512, 1198 as well as IWC Wage
2 Order 5-2001, Sections 11 and 12 and 7(A).

3 72. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
4 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of
5 trial subject to the following formula:

6 \$100 for the initial violation per employee per pay period; and

7 \$200 for each subsequent violation per employee per pay period.

8 These penalties will be allocated 75% to the Labor Workforce Development Agency and
9 25% to the affected employees.

10 73. In addition, as set forth above, Defendants failed to provide Plaintiff and all
11 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
12 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
13 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
14 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a
16 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

17 74. Although the law is somewhat unsettled, some courts have held that PAGA
18 penalties can be stacked for each underlying Labor Code violation. *See e.g. Hernandez v. Towne*
19 *Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D.
20 Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that
21 “PAGA penalties can be ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same
22 pay period for different Labor Code violations.”); *Lopez v. Friant & Assocs., LLC*, 15 Cal. App.
23 5th at 788 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor
24 Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’
25 requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately
26 under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *Schiller v. David’s Bridal, Inc.*,
27 No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010);

28 75. The foregoing factual and legal allegations are sufficient to trigger the payment of

1 PAGA penalties by Defendant to the LWDA and the aggrieved employees, who are and were
2 respiratory nurse therapists employed by Defendants in California.

3 76. Plaintiff need not seek or obtain certification for this PAGA representative action.
4 *See Arias v. Superior Court*, 46 Cal. 4th 969 (Cal. 2009) (class certification not needed in PAGA
5 representative actions where class action rules do not apply).

6 77. Further, for purposes of PAGA penalties, Plaintiff, as an aggrieved employee, need
7 not demonstrate or prove that Defendants' conduct in failing to provide accurate and itemized
8 wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, (2017) 15
9 Cal. App. 5th 773, 788, ("Consistent with the PAGA statutory framework and the plain language
10 and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA
11 for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and
12 intentional" requirements of section 226(e)(1)."); *see Willner v. Manpower Inc.* 35 F. Supp. 3d
13 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to
14 establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v.*
15 *Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of
16 recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not
17 establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815,
18 at *28 (C.D. Cal. July 3, 2013) ("Plaintiff do not need to establish a Cal. Lab. Code § 226(e)
19 injury to recover penalties under § 2699(f) of PAGA.").

20 78. As a result of the acts alleged above, Plaintiff and the aggrieved employees seek
21 penalties under Labor Code § 2699, et seq. because of Defendants' violation of Labor Code §§
22 226, 226.3, 226.7, 512, 1198, as well as IWC Wage Order 5-2001.

23 **RELIEF REQUESTED**

24 Wherefore, Plaintiff, on behalf of herself and the members of the Class and the
25 LWDA and aggrieved employees, prays for judgment against Defendants as follows:

26 1. An Order that this action may proceed and be maintained as a class action;

27 2. On the First Cause of Action:

28 a. A declaratory judgment that Defendants have violated California Labor

1 Code § 226.7, and Section 12 of IWC Wage Order No. 5-2001;

2 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the
3 Class Members for an hour of pay for each day that an off-duty rest period was not provided
4 in California during the Class Period;

5 3. On the Second Cause of Action:

6 a. A declaratory judgment that Defendants have violated California Labor
7 Code §§ 226.7, 512, and Section 11 of IWC Wage Order No. 5-2001;

8 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the
9 Class Members for an hour of pay for each day that a compliant meal period was not
10 provided in California during the Class Period;

11 4. On the Third Cause of Action:

12 a. A declaratory judgment that Defendants violated California Labor
13 Code §§ 226 and 226.3 by issuing inaccurate and/or incomplete wage statements;

14 b. An award to Plaintiff and Class Members of \$50 for each initial pay
15 period in which a violation of Section 226 occurred and \$100 for each subsequent pay period
16 in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the
17 Class, as well as an award of costs and reasonable attorney's fees.

18 5. On the Fourth Cause of Action

19 a. That the Court find and declare that Defendants violated the UCL and
20 committed unfair and unlawful business practices by failing to provide Plaintiff and the Class
21 members with off-duty rest and meal periods, and/or rest and meal period premiums, as required
22 by Cal. Labor Code §226.7;

23 a. Restitution, including, but not limited to, the relief permitted by sections
24 226.7 of the California Labor Code (i.e., meal and rest period premiums);

25 6. On the Fifth Cause of Action:

26 a. A civil penalty against Defendants in the amount of \$100 for the initial
27 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
28 California Labor Code for Plaintiff and for the aggrieved employees during all of the pay periods

1 in the PAGA Period;

2 b. All penalties available under 226.3 of the California Labor Code and the
3 Labor Code Private Attorneys General Act of 2004;

4 c. An award of reasonable attorney's fees against Defendants as specified in
5 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
6 with the PAGA claims;

7 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
8 connection with Plaintiff's and aggrieved employees' PAGA claim against Defendants as
9 provided for in Labor Code § 2699(g)(1);

10 7. All other relief as this Court deems proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law,
13 except as to the PAGA and UCL claims, which shall be tried to the Court.

14
15 Dated: April 30, 2021

ACKERMANN & TILAJEF, P.C.
EMPLOYMENT RIGHTS LAW GROUP, APC

16
17
18 By:



Craig J. Ackermann, Esq.

Amir Seyedfarshi, Esq.

*Attorneys for Plaintiff, the Class and the Aggrieved
Employees*