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in a representative capacity
7

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF MADERA

10
11 KEISHA ISCH, an individual, on behalf
of herself and all others similarly
12 situated,

13 Plaintiff,

14 vs.

15 COMMUNITY HOSPITALS OF
CENTRAL CALIFORNIA, a California
16 Corporation, FRESNO COMMUNITY
HOSPITAL AND MEDICAL CENTER,
17 a California Corporation, and DOES 1
through 25, inclusive,

18 Defendants.
19
20

Case No. MCV084662

ASSIGNED FOR ALL PURPOSES TO:
JUDGE JAMES E. OAKLEY
Department 45

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) Civil Penalties Pursuant To The Private
Attorneys General Act Of 2004,
California Labor Code § 2698, *Et Seq.***

DEMAND FOR JURY TRIAL

BY FAX

FILED
MADERA SUPERIOR COURT

MAR 22 2021

ADRIENNE Y. CALIP

CLERK

DEPUTY

1 Plaintiff Keisha Isch ("Plaintiff") brings this representative action under the Private
2 Attorneys General Act of 2004 ("PAGA") and, on information and belief, alleges as follows:

3 **PARTIES**

4 1. Plaintiff is an individual and a resident of California.

5 2. Defendant Community Hospitals Of Central California is a California
6 Corporation. Defendant Fresno Community Hospital And Medical Center is a California
7 corporation. These entities operate in concert under the banner "Community Medical
8 Centers," they are both alleged to be responsible for the wage-and-hour violations herein
9 asserted, and all causes of action herein alleged are pleaded against them both. In this
10 Complaint, Defendant Community Hospitals of Central California and Defendant Fresno
11 Community Hospital And Medical Center will be collectively referred to as "Community
12 Medical Centers" or "CMC." Any allegations as to Community Medical Centers or CMC
13 apply to both named defendants.

14 3. CMC is a private healthcare network that is based in the Central Valley and
15 which operates four hospitals, a cancer institute, and several long-term care, outpatient and
16 other healthcare facilities. The Community Regional Medical Center is one such facility.

17 4. Plaintiff worked for CMC as a non-exempt hourly employee for several years.
18 By way of this Complaint, Plaintiff seeks civil penalties in an amount that renders this matter
19 an "unlimited" civil case within the meaning of California law. Before filing this lawsuit,
20 Plaintiff submitted a notice under PAGA to the California Labor & Workforce Development
21 Agency, dated December 4, 2020, and which is incorporated herein by reference and which
22 is attached hereto as **Exhibit A**.

23 5. CMC subjected Plaintiff and other employees to wage-and-hour violations.
24 These violations are discussed in **Exhibit A**. Plaintiff is an aggrieved employee within the
25 meaning of PAGA, and the other aggrieved employees on whose behalf civil penalties are
26 sought in this action are described in **Exhibit A** and re-asserted herein in the next paragraph.

27 6. The alleged aggrieved employees covered in this action are Plaintiff and all
28 current and former non-exempt employees of Community Medical Centers who worked at

1 any of its locations in California at any time during the applicable limitations period
2 (collectively, the "aggrieved employees").

3 7. The true names and capacities of the Doe Defendants (Does 1 through 25,
4 inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that
5 they are in some way liable for the illegal conduct, injury, and damages alleged herein. The
6 Doe Defendants are believed to be co-employers or individuals (e.g., executives) liable for
7 the conduct complained of herein, whether because of alter-ego status, agency principles,
8 aider and abettor (or co-conspirator) status, statutorily-imposed responsibility (e.g., Labor
9 Code section 558.1), or otherwise.

10 JURISDICTION

11 8. The Court has personal jurisdiction over CMC because it is a citizen of this
12 State, does business in this State, and otherwise has minimum contacts with this State. The
13 Court has personal jurisdiction over Plaintiff because she is a resident of California and has
14 sufficient minimum contacts with this State.

15 VENUE

16 9. CMC serves patients from Madera County, and its advertising is viewable by
17 residents of Madera County. CMC has also employed, and continues to employ, residents
18 of Madera County.

19 10. Venue is proper in Madera County as one or more aggrieved employees are
20 residents of Madera County, and part of the alleged unlawful conduct and/or its effects
21 occurred in Madera County.

22 11. Code Of Civil Procedure section 393 provides in pertinent part:

23 "Subject to the power of the court to transfer actions and
24 proceedings as provided in this title, the county in which the
25 cause, **or some part of the cause, arose**, is the proper county
for the trial of the following actions:

26 (a) **For the recovery of a penalty** or forfeiture imposed by
27 statute, except, that when it is imposed for an offense committed
28 on a lake, river, or other stream of water, situated in two or more
counties, the action may be tried in any county bordering on the
lake, river, or stream, and opposite to the place where the offense
was committed." (Emphasis added.)

1 12. Plaintiff alleges that one or more aggrieved employees are residents of Madera
2 County and have been residents of Madera County during the applicable limitations period,
3 they were hired by CMC while they resided in Madera County, they received wages from
4 CMC while they resided in Madera County, they were subject to CMC's alleged wage-and-
5 hour violations while they resided in Madera County, and they have commuted from Madera
6 County (their residence) to their reporting location for CMC and back home from CMC to
7 Madera County. In short, Plaintiff alleges that one or more aggrieved employees have
8 worked for CMC as non-exempt employees during the time they have resided in Madera
9 County which, again, was during the applicable limitations period.

10 13. Part of Plaintiff's single cause of action in this matter deals with unreimbursed
11 expenses. Plaintiff alleges that, among other things, CMC required employees to utilize
12 their personal cell-phones for work-related purposes and CMC did not reimburse employees
13 for the associated cell-phone expenses they have incurred, all in violation of Labor Code
14 section 2802.

15 14. Plaintiff alleges that, with respect to the aggrieved employees who are and
16 have been residents of Madera County, they have been required to and did utilize their
17 personal cell-phones for CMC for work-related purposes in Madera County, they have
18 incurred expenses in Madera County for their CMC-required work-related cell-phone usage,
19 they have received their cell-phone bills in Madera County for this usage, and they have paid
20 their corresponding cell-phone bills from and in Madera County, which expenses, to date,
21 have not been reimbursed in whole or in part by CMC.

22 15. Plaintiff alleges that, with respect to aggrieved employees who are and have
23 been residents of Madera County, they have incurred unreimbursed expenses in Madera
24 County for their CMC-required work-related cell-phone usage, and Plaintiff alleges that this
25 violates Labor Code section 2802 and leads to civil penalties recoverable under PAGA.
26 With respect to these aggrieved employees, Plaintiff alleges that the underlying injury (the
27 incurrence of unreimbursed expenses) occurred in Madera County, and CMC's
28 corresponding liability arose in Madera County.

16. Standing alone, the unreimbursed expenses in Madera County, as to which Plaintiff seeks civil penalties under PAGA, are sufficient to establish the propriety of venue in Madera County. (Code Civ. Proc., § 393(a); *Dow AgroSciences LLC v. Superior Court* (2017) 16 Cal.App.5th 1067, 1077 ["because section 393(a) requires a different venue than the defendant's residence, it supplants the general venue rule codified in section 395(a)"]; *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 734 [a cause of action arises where the "resulting injury was sustained"]; *California State Parks Foundation v. Superior Court* (2007) 150 Cal.App.4th 826, 844 [all that matters is "that some part of the injury occurred in the county in which the action was brought"]; see also Code Civ. Proc., §395.5 [a corporation may be sued in a county "where the obligation or liability arises"]; *Black Diamond Asphalt, Inc. v. Superior Court* (2003) 109 Cal.App.4th 166, 172 ["For purposes of laying venue, a liability 'arises' where the injury occurs"].) Moreover, in addition to the unreimbursed expenses in Madera County, the other alleged wage-and-hour violations asserted herein have also caused additional injury to the aggrieved employees who are and have been residents of Madera County.

GENERAL ALLEGATIONS

17. During the applicable limitations period, Community Medical Centers maintained policies and practices governing the working conditions of, and payment of wages to, Plaintiff and the rest of the aggrieved employees. These policies and practices violated California's labor laws.

18. Specifically, during applicable limitations period, and as alleged in **Exhibit A**, Community Medical Centers has committed various violations of California's Labor Code and the applicable Wage Order, including:

(a) Unlawful Rounding. CMC has had a policy or practice of "rounding" time entries that was not neutral on its face and/or in practice, and that resulted in the unlawful underpayment of wages.

(b) Incorrect Calculation Of The Regular Rate. CMC has failed to properly include all compensatory items (e.g., awards, retroactive pay, shift differentials, and pay for

attendance around the holidays) in the regular rate of pay and thus failed to pay all wages owed, including (without limitation) overtime wages.

(c) Meal Period & Rest Break Violations. CMC failed to provide legally-compliant meal periods and rest breaks to Plaintiff and the rest of the aggrieved employees. Specifically, CMC has not established or provided employees with a sufficient break system in the busy patient-heavy environment in which they work, causing repeated meal period and rest break violations. Employees must use part of their unpaid meal periods and rest breaks for activities such as, *inter alia*, walking and hand-washing/sanitizing that reduces meal periods below the 30-minute threshold and rest breaks below the 10-minute threshold. CMC also flagged certain meal period and rest break infractions, but failed to pay the required meal period and rest period premiums at the proper rate of pay.

(d) Failure To Reimburse For Expenses. CMC failed to reimburse Plaintiff and the rest of the aggrieved employees for work-related expenses they incurred, including, without limitation, for the CMC-required work-related usage of their personal cellular phones to perform work-related duties and communications and/or to carry out the directions of CMC.

(e) Inaccurate Wage Statements. CMC failed to provide accurate wage statements to Plaintiff and the rest of the aggrieved employees. CMC failed to issue accurate wage statements as a consequence of the: (i) unlawful rounding of time entries, (ii) compensable activities that occurred during meal periods, (iii) failure to properly include the compensatory items in the regular rate of pay, and the (iv) failure to pay the requisite meal period and rest period premiums. Moreover, (v) CMC did not provide a legal name of an employer on its wage statements (instead it listed "Community Medical Centers," which is a colloquial shorthand for multiple entities). In addition, (vi) CMC's wage statements failed to accurately depict the total hours worked in the pay period. Finally, (vii) when CMC paid compensatory items such as awards or retroactive pay, CMC failed to specify the "inclusive dates" or pay period applicable to these items.

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1 (f) Failure To Pay All Wages Due Upon Separation From Employment.
2 CMC failed to pay, in the final paychecks (or direct deposits) issued to them, all wages due
3 Plaintiff and the rest of the former aggrieved employees. Specifically, CMC failed to pay
4 all wages due Plaintiff and the rest of the separated aggrieved employees as a result of the:
5 (i) unlawful rounding of time entries, (ii) compensable activities that occurred during meal
6 periods, (iii) failure to properly include the compensatory items in the regular rate of pay,
7 and the (iv) failure to pay the requisite meal period and rest period premiums.

8 **FIRST CAUSE OF ACTION**

9 Civil Penalties Pursuant To PAGA

10 (Against CMC And Does 1 Through 25, Inclusive)

11 19. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 18
12 inclusive as though fully set forth herein.

13 20. Pursuant to Labor Code section 2699.3, Plaintiff brings this action as a non-
14 class, representative action under PAGA.

15 21. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of herself and all
16 other aggrieved employees, brings this action as a representative action under PAGA for
17 civil penalties based on violations of the California Labor Code and the applicable IWC
18 Wage Order(s) as set forth in **Exhibit A** and repeated herein.

19 22. Plaintiff has timely and adequately exhausted her administrative remedies.
20 Plaintiff submitted her PAGA Notice on December 4, 2020, provided a copy of the same to
21 both named defendants via certified mail, and waited the requisite 65-day time-period before
22 filing this PAGA action in court.

23 23. During the applicable limitations period, as alleged in **Exhibit A**, CMC has
24 violated California wage-and-hour law in numerous respects, including:

25 a. The failure to pay all wages due as a result of unlawful time-rounding,
26 in violation of, *inter alia*, Labor Code §§ 204, 510, 1194, 1197, 1198, and 1199;

27 b. The failure to properly include economic items in the regular rate which
28 has caused the overtime and/or double-time wages of employees to be underpaid, in

1 violation of, *inter alia*, Labor Code §§ 510 and 1198.

2 c. The failure to provide employees with legally-compliant meal periods,
3 and pay them the requisite meal period premiums, in violation of, *inter alia*, Labor Code §§
4 512 and 226.7.

5 d. The failure to provide employees with legally-compliant rest periods,
6 and pay them the requisite rest period premiums, in violation of, *inter alia*, Labor Code §
7 226.7.

8 e. The failure to properly pay the expenses incurred by employees, in
9 violation of Labor Code § 2802(a)-(c).

10 f. The failure to pay employees all their wages due upon separation from
11 employment, in violation of Labor Code §§ 201, 202, and 203.

12 g. The failure to issue accurate itemized wage statements to employees,
13 in violation of Labor Code §§ 226 and 226.3.

14 h. The failure to maintain accurate records as required by Labor Code §
15 1174(d) and Labor Code § 226(a).

16 24. Labor Code section 2699(f)(2) provides that the default civil penalties
17 recoverable under PAGA for such violations are “one hundred dollars (\$100) for each
18 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
19 for each aggrieved employee per pay period for each subsequent violation,” except where
20 the Labor Code specifically provides for another penalty. In addition to the default civil
21 penalties PAGA provides, Plaintiff seeks, through PAGA, any civil penalties that are
22 specifically provided by statute for the alleged Labor Code violations. Plaintiff further seeks
23 an award of costs and attorneys fees, as allowed under PAGA.

24 **PRAYER**

25 WHEREFORE, Plaintiff requests judgment as follows:

26 **On The First Cause Of Action**

- 27 1. For civil penalties recoverable under PAGA;
28 2. For attorney's fees and costs pursuant PAGA, or pursuant to any applicable

1 legal doctrine, including the common fund doctrine, the substantial benefit theory, and/or
2 the catalyst theory;

3 3. For post-judgment interest on all amounts owing, commencing from the date
4 such amounts were due; and

5 4. For all such other relief as the Court deems just and proper.

6 Dated: March 22, 2021

SCHEPPACH BAUER PC

7
8 By: 

JOHN M. SCHEPPACH
Attorneys for Plaintiff, KEISHA ISCH,
in a representative capacity

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13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a trial by jury on all issues and claims so triable.

15 Dated: March 22, 2021

SCHEPPACH BAUER PC

16
17 By: 

JOHN M. SCHEPPACH
Attorneys for Plaintiff, KEISHA ISCH,
in a representative capacity

EXHIBIT A

PAGA NOTICE

December 4, 2020

VIA CERTIFIED MAIL

Employer

Community Hospitals Of Central California
Brienne L. Marriott
Registered Agent For Service Of Process
789 Medical Center Drive East
Clovis, CA 93611

Employer

Fresno Community Hospital And Medical Center
Brienne L. Marriott
Registered Agent For Service Of Process
789 Medical Center Drive East
Clovis, CA 93611

VIA ONLINE SUBMISSION

Agency

State Of California,
Labor & Workforce
Development Agency

Online Address

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Re: *Keisha Isch, et al. v. Community Hospitals Of Central California, et al.*
PAGA Notice

Dear Employers and the LWDA:

Keisha Isch ("Isch"), on behalf of herself and all other aggrieved non-exempt employees, and through her undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 ("PAGA"), of alleged violations of the California Labor Code committed by Community Hospitals Of Central California and Fresno Community Hospital And Medical Center (collectively, "Community Medical Centers" or "CMC"). Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth in the paragraphs below. All citations in this PAGA Notice are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice.

I. BACKGROUND

Community Medical Centers is a private healthcare network that is based in the Central Valley and which operates four hospitals, a cancer institute, and several long-term care, outpatient and other healthcare facilities. Isch worked for Community Medical Centers as a non-exempt hourly employee. During her employment at Community Medical Centers, she experienced several wage-and-hour violations.

PAGA Group

This PAGA Notice applies to Isch and all current and former non-exempt employees of Community Medical Centers who worked at any of its locations in California at any time during the applicable limitations period. Isch and all of these other current and former employees are referred to herein collectively as the "aggrieved employees."

II. ALLEGED LABOR CODE VIOLATIONS

Isch and other aggrieved employees have experienced a variety of Labor Code violations. They are discussed below in no particular order.

A. Unlawful Time-Rounding

At all material times, Community Medical Centers maintained a time and attendance policy. At all material times, Community Medical Centers maintained a time-rounding practice that rounded the time entries of Isch and other aggrieved employees. On information and belief, the time-rounding shaved off Isch's and other aggrieved employees' compensable work time, and the rounding was not neutral on its face and/or in practice. Accordingly, CMC's time-rounding practice was and is unlawful under California law.

The alleged unlawful time-rounding caused Isch and other aggrieved employees to not be paid the applicable California minimum wage for compensable work (in violation of, and actionable under, Labor Code §§ 1194, 1194.2, 1197, 1197.1 & 1199), to not be timely paid all their wages owed each pay period (in violation of, and actionable under Labor Code §§ 204 & 218), and to not receive proper overtime and/or double-time compensation (in violation of, and actionable under, Labor Code §§ 510 & 1198).

B. Incorrect Calculation Of The Regular Rate

On information and belief, Community Medical Centers provided employees with compensatory items besides normal hourly pay, including (without limitation) non-cash awards, retroactive pay, shift differentials, and pay for attendance around the holidays. CMC was required to, but failed to, properly include these items in the regular rate of pay for purposes of calculating overtime and double-time wages owed. CMC's failure to properly calculate the regular rate and/or properly include compensatory items in the regular rate has caused the overtime and/or double-

time wages of employees to be underpaid (in violation of, and actionable under, Labor Code §§ 204, 218, 510 & 1198).

C. Meal Period Violations

At all material times, CMC maintained a policy and/or practice that prevented employees, including Isch, from receiving legally-compliant first and second meal periods. Employees, including Isch, were routinely denied legally-compliant first and second meal periods.

CMC has not established or provided employees with a sufficient break system in the busy patient-heavy environment in which they work, causing employees to routinely take delayed or shortened meal periods or forgo them altogether. For meal periods, employees have to wait for relief in order to take a meal period, but CMC does not have sufficient protocols or systems in place for this relief to be timely or universally-available. On information and belief, employees are also under CMC's control during meal periods and have their meal periods interrupted by work tasks and communications. Employees must also utilize part of their unpaid meal periods for activities, such as walking and hand-washing/sanitizing, that reduces their meal period below the 30-minute threshold.

Under California law, all non-exempt employees who work more than five (5) hours in a shift are entitled to take an unpaid, duty-free meal period of at least thirty (30) minutes. Meal periods must start after no more than five (5) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Under California law, all non-exempt employees who work more than ten (10) hours in a shift are entitled to take a second unpaid, duty-free meal period of at least thirty (30) minutes. Second meal periods must start after no more than ten (10) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Employers are forbidden from requiring employees to work during a meal period that is mandated by California statutory law or by an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a meal period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

Isch and other aggrieved employees routinely worked the requisite hours to be entitled to a first meal period under California law. CMC was required to provide a first meal period to Isch and other aggrieved employees in accordance with law, and CMC failed to do so. CMC also failed to provide employees with a legally-compliant second meal period on shifts they worked more than ten (10) hours. CMC's policies and/or practices, which have denied employees legally-compliant first and second meal periods, continue to persist.

CMC did not pay Isch or other aggrieved employees the one hour of pay for the first and second meal period violations to which they were entitled. CMC's non-provision of compliant meal periods, and the CMC's non-payment of meal period premiums, violated and is actionable under Labor Code § 512(a), and Labor Code §§ 226.7(b) & (c).

CMC also flagged and paid meal period premiums for certain meal period infractions, but CMC failed to pay the meal period premiums at the proper rate. CMC paid meal period premiums

at the employee's base rate or some other rate that was not legally sufficient. CMC's failure to pay meal period premiums at the correct rate violated and is actionable under Labor Code § 226.7(c).

There may be other policies and/or practices that caused missed, short, or late meal periods, which formal discovery may uncover.

D. Rest Break Violations

At all material times, CMC maintained a policy and/or practice that prevented employees, including Isch, from receiving legally-compliant rest periods. Employees, including Isch, were routinely denied legally-compliant rest periods.

CMC has not established or provided employees with a sufficient break system in the busy patient-heavy environment in which they work, causing employees to routinely take delayed or shortened rest periods or forgo them altogether. Employees are required or expected to carry CMC-issued communication devices and/or cell phones during rest periods, causing them to be under CMC's control during rest periods. On information and belief, employees also have their rest periods interrupted by work tasks and communications. Employees must also utilize part of their rest periods for activities, such as walking and hand-washing/sanitizing, that reduces their rest period below the 10-minute threshold.

Under California law, all non-exempt employees of Community Medical Centers must be authorized and permitted to take a "net" 10-minute rest break for every four (4) hours worked, or major fraction thereof. (IWC Wage Orders, § 12(A).) More specifically, non-exempt employees must be authorized and permitted to take one 10-minute rest break for shifts from three and one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.)

In terms of rest break timing, CMC must authorize and permit the taking of rest breaks "in the middle of each work period." (IWC Wage Orders, § 12(A); see also *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1040 [analyzing the rest break timing rule].) In terms of rest break duration, California law requires employers to provide employees with a "net" rest time of 10 minutes. (IWC Wage Orders, § 12.) An employee's 10 minutes of rest begins the moment the employee can reach an appropriate area of rest and be free from employer control. (*Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 112 [a rest period "begins when the employee reaches an area away from the work station that is appropriate for rest"]; *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273 ["California law requires employers to relieve their employee of all work-related duties and employer control during 10-minute rest periods"].)

Under California law, it is illegal for an employer to require an employee to work during a rest period that is mandated by California statutory law or an IWC Wage Order. (Labor Code, § 226.7(b).) Under California law, employers must provide an employee with an additional hour of pay for each workday that an employee is not provided with a rest period "in accordance with"

California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

Isch and other aggrieved employees routinely worked the requisite hours to be entitled to first, second, and third rest periods under California law. CMC was required to authorize and permit Isch and other aggrieved employees to take rest periods in accordance with California law, and CMC failed to do so.

CMC did not pay Isch or other aggrieved employees the one hour of pay for rest period violations to which they were entitled. CMC's non-provision of compliant rest periods, and CMC's non-payment of rest period premiums, violated and is actionable under Labor Code §§ 226.7(b) and (c).

On information and belief, CMC also flagged and paid rest period premiums for certain rest period infractions, but CMC failed to pay the rest period premiums at the proper rate. CMC paid rest period premiums, if at all, at the employee's base rate or some other rate that was not legally sufficient. CMC's failure to pay rest period premiums at the correct rate violated and is actionable under Labor Code § 226.7(c).

There may be other policies and/or practices that caused employees to experience non-compliant rest periods which formal discovery may uncover.

E. Wage Statements

Labor Code section 226, subdivision (a), requires that employers (such as CMC) furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing such matters as the total hours worked, the gross wages earned, the net wages earned, and the applicable hourly rates and the hours worked at those rates during the pay period. CMC's wage statements listed "Community Medical Centers" as the employer.

As a result of CMC's alleged unlawful time-rounding, compensable activities performed during meals, and the inaccurate calculation of the regular rate, CMC failed to provide Isch and other aggrieved employees with accurate wage statements that accurately reflected their total hours worked (violating Labor Code § 226(a)(2)), their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)).

In addition, insofar as meal period and rest period premiums must be shown on wage statements, CMC's failure to pay premiums, and CMC's payment of premiums at the incorrect rate, rendered its wage statements deficient because they failed to accurately show gross wages earned (violating Labor Code § 226(a)(1)) or net wages earned (violating Labor Code § 226(a)(5)) during the pay period.

Moreover, CMC's wage statements failed to show the total hours worked for its employees. The wage statements did not accurately itemize the total hours worked. CMC's wage statements contain multiple different pay lines, with a dizzying amount of references to compensatory items

and hours. Employees cannot discern, from the face of the wage statements alone, the total hours worked in the pay period. Accordingly, CMC's wage statements violated Labor section Code § 226(a)(2).

Finally, when CMC paid compensatory items such as non-cash awards or retroactive pay, CMC failed to specify the "inclusive dates" or pay period as to which these items applied, violating Labor Code § 226(a)(6). When CMC paid compensatory items such as non-cash awards, retroactive pay, or pay for work around the holidays, the proper overtime owed on these items was not shown, in violation of Labor Code § 226(a)(1), (5), and (9).

Although unnecessary for PAGA purposes, the above-mentioned violations were knowingly and intentionally committed, and resulted in injury to the employees.

F. Unlawful Recordkeeping

CMC was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid, to its employees; however, CMC failed to do so in violation of Labor Code § 1174(d). The unlawful time-rounding, inaccurate calculation of the regular rate, compensable activities performed during meal periods, and the non-payment of the proper meal and/or rest period premiums, rendered these records inaccurate and incomplete.

CMC was also required to maintain, for three years at a central location within the state of California, copies of wage statements that comply with Labor Code § 226(a). CMC's wage statements were inaccurate, deficient, or otherwise non-compliant with Labor Code § 226(a) as discussed above. Thus, CMC did not keep the records required by law.

G. Failure To Timely Pay All Wages Due Upon Separation From Employment

Labor Code § 201 and 202 impose a time requirement on employers when it comes to providing the final wages of separated employees. A willful failure to pay all the wages due to a separated employee in the time required by the Labor Code creates additional liability under Labor Code § 203. As a result of CMC's alleged unlawful time-rounding, the inaccurate calculation of the regular rate, the compensable activities performed during meal periods, and the non-payment of the proper meal and rest period premiums, CMC did not provide separated employees (Isch included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. CMC's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), 226.3, and 256.

H. Unreimbursed Expenses

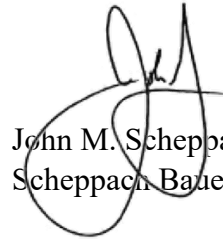
Labor Code § 2802 requires employers to fully reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. CMC failed to pay Isch and other aggrieved employees for all their work-related expenses. Among other things, Isch and other aggrieved employees were required to use their personal cell-phones

to perform work-related duties and communications and/or to carry out the directions of CMC, and were not properly reimbursed for their cell-phone usage or provided with cell-phone allowance pay, in violation of and actionable under Labor Code § 2802(a)-(c).

III. Civil Penalties

For all the above-specified Labor Code violations, Isch, on behalf of herself and all other aggrieved employees, reserves all rights to pursue any and all available civil penalties that California law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including, without limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA. Isch, on behalf of herself and all other aggrieved employees, also reserves the right to assert claims for Labor Code violations and associated penalties that are uncovered in the discovery process but which are presently unknown.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John M. Scheppach', written over a circular stamp or seal.

John M. Scheppach
Scheppach Bauer PC