

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Melissa A. Huether, Esq. (SBN 316604)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Emails: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
mhuether@lelawfirm.com
wht3@lelawfirm.com

E-FILED
11/22/2022 11:14 AM
Superior Court of California
County of Fresno
By: Rosemary Brace, Deputy

Attorneys for Plaintiff COLMEJA U. VERCHER,
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

COLMEJA U. VERCHER on behalf of herself
and other aggrieved employees,

Plaintiff,

vs.

FRESNO COMMUNITY HOSPITAL AND
MEDICAL CENTER; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: [22CECG03741](#)

PAGA ACTION

**PLAINTIFF COLMEJA U.
VERCHER'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff COLMEJA U. VERCHER ("Plaintiff"), who alleges and
complains against Defendants FRESNO COMMUNITY HOSPITAL AND MEDICAL CENTER;
and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all

1 hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure
2 to authorize or permit all legally required and/or compliant meal periods or pay meal period
3 premium wages; indemnification for all necessary expenditures or losses incurred by employees in
4 direct consequence of discharging their duties; statutory penalties for failure to timely pay earned
5 wages during employment; statutory penalties for failure to provide accurate wage statements;
6 statutory waiting time penalties in the form of continuation wages for failure to timely pay
7 employees all wages due upon separation of employment. Plaintiff seeks on a representative basis,
8 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
9 attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
10 the State of California, and others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to Fresno County, at 2823 Fresno Street, CA 93721.

20 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
21 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
22 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
23 tolled from April 6, 2020, until October 1, 2020.

24 **III. PARTIES**

25 4. Plaintiff brings this action as a representative of the Labor and Workforce
26 Development Agency on behalf of herself and other current and former employees subject to
27 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
28 filed include current, former and/or future employees of Defendants who work, worked, or will

1 work for Defendants as direct employees as well as temporary employees employed through temp
2 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
3 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
4 employed by Defendants in an hourly position at Defendants' location in San Fresno from in or
5 around July 2016, until on or about April 13, 2022.

6 5. Plaintiff is informed and believes and thereon alleges that Defendant FRESNO
7 COMMUNITY HOSPITAL AND MEDICAL CENTER is authorized to do business within the
8 State of California and is doing business in the State of California and/or that Defendants DOES
9 1-25 are, and at all times relevant hereto were persons acting on behalf of Defendant FRESNO
10 COMMUNITY HOSPITAL AND MEDICAL CENTER in the establishment of, or ratification of,
11 the aforementioned illegal wage and hour practices or policies. Defendant FRESNO
12 COMMUNITY HOSPITAL AND MEDICAL CENTER operates in Fresno County and employed
13 Plaintiff and putative class members in Fresno County, including but not limited to, at 2823
14 Fresno Street, Fresno, CA 93721.

15 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 50 are corporations or are other business entities or organizations of a nature unknown to
17 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
18 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
19 working conditions of employment of Plaintiff and aggrieved employees.

20 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
21 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
22 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
23 supervisor, independent contractor and/or employee of each defendant who violated or caused to
24 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
25 the Industrial Welfare Commission's wage orders regulating hours and days of work.

26 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said defendants by said fictitious names, and will amend this complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
2 named defendants is in some manner responsible for the events and allegations set forth in this
3 complaint.

4 9. Plaintiff makes the allegations in this complaint without any admission that, as to
5 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
6 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**
9 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

10 **(Against all Defendants by Plaintiff)**

11 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

12 11. During the period beginning one (1) year preceding Plaintiff sending the initial
13 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
14 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 2802 Sections 14 and 15 of the applicable Wage
15 Orders.

16 12. Specifically, Defendants have committed the following violations of California
17 Labor Code:

18 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
19 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the
22 employee is suffered and permitted to work. This includes the time an employee spends, either
23 directly or indirectly, performing services which inure to the benefit of the employer.

24 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
25 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
26 Wage Orders.

27 15. In this case, Plaintiff and other current and former aggrieved California-based
28 hourly non-exempt employees worked more minutes per shift than Defendants credited them with

1 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
2 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
3 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
4 not limited to:

5 (a) "Rounding down" or "shaving down" Plaintiff and other current and former
6 aggrieved California-based hourly non-exempt employees punches, including punches for meal
7 breaks, to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and
8 other current and former aggrieved California-based hourly non-exempt employees for this time;
9 and

10 (b) Since the outbreak of COVID-19, requiring Plaintiff and other current and former
11 aggrieved California-based hourly non-exempt employees to arrive prior to their start shift to
12 undergo off-the-clock COVID-19 screenings, including temperature checks and medical
13 questionnaires, prior to being permitted to clock in before their start shift.

14 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
15 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
16 control without paying wages for that time. This resulted in Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees working time for which they were not
18 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
19 Wage Order.

20 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
21 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
22 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
23 which includes all time that an employee is under control of the employer and all time the
24 employee is suffered and permitted to work. This includes the time an employee spends, either
25 directly or indirectly, performing services that inure to the benefit of the employer.'

26 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
27 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
28 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

19. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) "Rounding down" or "shaving down" Plaintiff and other current and former aggrieved California-based hourly non-exempt employees punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and other current and former aggrieved California-based hourly non-exempt employees for this time; and

(b) Since the outbreak of COVID-19, requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to arrive prior to their start shift to undergo off-the-clock COVID-19 screenings, including temperature checks and medical questionnaires, prior to being permitted to clock in before their start shift.

20. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

21. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked

1 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

2 22. California law requires an employer to authorize or permit an employee an
3 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
4 all duties and the employer relinquishes control over the employee's activities prior to the
5 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 5 at §11; *Brinker*
6 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
7 employee for a work period of more than ten (10) hours per day without providing the employee
8 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
9 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
10 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
11 period is only permitted when: (1) the nature of the work prevents an employee from being
12 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

13 23. If an employer fails to provide an employee a meal period in accordance with the
14 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
15 for each workday that a legally required and compliant meal period was not provided. Labor Code
16 section 226.7; Wage Order 5 at §11.

17 24. In this case, Defendants failed to authorize or permit legally required and compliant
18 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
19 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
20 limited to:

21 (a) Rounding down" or "shaving down" Plaintiff and other current and former
22 aggrieved California-based hourly non-exempt employees punches, including punches for meal
23 breaks, to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and
24 other current and former aggrieved California-based hourly non-exempt employees for this time.

25 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
26 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
27 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
28 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt

1 employees did not receive legally required and compliant meal periods, in violation of Labor Code
2 section 226.7.

3 26. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
4 and other current and former aggrieved California-based hourly non-exempt employees not
5 receiving wages to compensate them for workdays during which Defendants did not provide them
6 with meal periods in compliance with California law.

7 27. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
8 **Employment:** California law requires that every employer must indemnify its employees for all
9 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
10 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
11 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
12 2802.)

13 28. Defendants have violated Labor Code Section 2802 by failing to indemnify
14 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
15 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
16 employed these policies, practices, and/or procedures included, but were not limited to, requiring
17 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
18 to use or purchase their own tools and/or resources in order to work for Defendants, including but
19 not limited to:

20 (a) Since the outbreak of COVID-19, prior to clocking in for the start of their shifts,
21 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
22 were required to answer COVID-19 questionnaires on an application Defendants required that
23 they maintain on their personal cell phones without reimbursement for the cost of cellular and/or
24 data usage associated with the use of the application.

25 29. The costs incurred by Plaintiff and similarly situated employees to use or purchase
26 their own tools and/or resources, including their cell phones and the associated cellular and/or data
27 plans, for their mandatory compliance with Defendants' aforementioned policies, practices, and/or
28 procedures were significant as a result of their employment with Defendants.

1 30. Moreover, Defendants employed policies and procedures which ensured Plaintiff
2 and aggrieved employees would not receive indemnification for their employment related
3 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
4 indemnification in compliance with California law.

5 31. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
6 employment related expenses, including but not limited to costs related to use of their personal
7 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

8 32. **Failure to timely pay earned wages during employment:** In California, wages
9 must be paid at least twice during each calendar month on days designated in advance by the
10 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
11 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
12 16th and the 26th day of that month and wages earned between the 16th and the last day,
13 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
14 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
15 paid within seven (7) calendar days following the close of the payroll period in which wages were
16 earned. Labor Code section 204(d).

17 33. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
18 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
19 exempt employees' earned wages (including minimum wages, overtime wages, and/or meal period
20 premium wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
21 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former
22 aggrieved California-based hourly non-exempt employees' their earned wages within the
23 applicable time frames outlined in Labor Code section 204.

24 34. **Failure to provide complete and accurate wage statements:** Labor Code section
25 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
26 employee his or her wages, the employer must "furnish each of his or her employees ... an
27 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
28 employee, except for any employee whose compensation is solely based on a salary and who is

1 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
2 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
3 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
4 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
5 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
6 name of the employee and his or her social security number, (8) the name and address of the legal
7 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
8 the corresponding number of hours worked at each hourly rate by the employee.”

9 35. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
10 and other current and former aggrieved California-based hourly non-exempt employees all wages
11 earned (including minimum wages, overtime wages, and/or meal period premium wages) rendered
12 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
13 wage statements inaccurate, in violation of Labor Code section 226.

14 36. **Failure to pay employees all wages due at time of termination/resignation:** An
15 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
16 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
17 hours of resignation (Labor Code section 202).

18 37. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
19 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
20 all their earned wages (including minimum wages, overtime wages, and/or meal period premium
21 wages), Defendants failed to pay those employees timely after each employee’s termination and/or
22 resignation, in violation of Labor Code sections 201, 202, and 203.

23 38. Defendants’ violations of Wage Order 5 constituted violations of Labor Code
24 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

25 39. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
26 employee, on behalf of himself or herself and other current or former employees, to bring a civil
27 action to recover civil penalties against all Defendants pursuant to the procedures specified in
28 Labor Code section 2699.3.

1 40. Plaintiff has complied with the procedures for bringing suit specified in Labor
2 Code section 2699.3. On May 20, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and
3 provided notice to Defendants by certified mail which provided notice of the specific provisions of
4 the Labor Code alleged to have been violated, including the facts and theories to support the
5 violations alleged.

6 41. On August 4, 2022, Plaintiff filed an Amended PAGA Claim Notice with the
7 LWDA and provided notice to Defendants by certified mail which provided notice of the specific
8 provisions of the Labor Code alleged to have been violated, including the facts and theories to
9 support the violations alleged.

10 42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
11 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
12 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
13 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
14 to investigate Plaintiff's claims.

15 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
16 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
17 512, 1194, 1197, 2802, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
18 Notice to the LWDA to the present, in the following amounts:

19 a. For violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
20 512, 1194, 1197, 2802 one hundred dollars (\$100) for each aggrieved employee per pay period for
21 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
22 for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

23 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
24 for each employee for each pay period for the initial violation, and for each subsequent violation,
25 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
26 established by Labor Code section 226.3].

27 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
28 employee for each pay period for the initial violation, and for each subsequent violation, one

1 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
2 established by Labor Code section 558] and any unpaid wages.

3 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
4 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
5 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
6 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

7 44. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
8 reasonable attorneys' fees and costs in connection with her claims for civil penalties.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER**
11 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

12 **ON THE FIRST CAUSE OF ACTION:**

13 1. That Defendants be found to have violated the provisions of the Labor Code and
14 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

15 2. For any and all legally applicable penalties during the relevant statute of limitations
16 subject to any permissible tolling, including but not limited to those recoverable under the
17 California Labor Code, including but not limited to section 2699(f);

18 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
19 under California Labor Code section 2699(g); and

20 4. For such and other further relief, in law and/or equity, as the Court deems just or
21 appropriate

22
23 Dated: November 22, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

24
25 By:



26 Joseph Lavi, Esq.
27 Vincent C. Granberry, Esq.
28 Melissa A. Huether, Esq.
Attorneys for Plaintiff
CLOMELJA U. VERCHER
on behalf of herself and current and former
aggrieved employees