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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 SAMANTHA JOE SERRANO, individually, and
on behalf of all others similarly situated,

12 Plaintiff,

13
14 vs.

15 HOSPITAL OF BARSTOW, INC d/b/a
16 BARSTOW COMMUNITY HOSPITAL, a
California Corporation; and DOES 1 through 10,
17 inclusive,

18 Defendants.

Case No.: CIVDS2006967

**THIRD AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

[Amended As of Right Pursuant to Labor
Code Section 2699.3(2)(C)]

1. Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
6. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and
7. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.].
8. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

Action Filed: March 5, 2020

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION & PRELIMINARY STATEMENT..... 1

THE PARTIES 3

 A. Plaintiff..... 3

 B. Defendants 3

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION 4

CLASS ACTION ALLEGATIONS..... 7

FIRST CAUSE OF ACTION..... 11

SECOND CAUSE OF ACTION..... 13

THIRD CAUSE OF ACTION 14

FOURTH CAUSE OF ACTION..... 15

FIFTH CAUSE OF ACTION..... 16

SIXTH CAUSE OF ACTION..... 17

SEVENTH CAUSE OF ACTION..... 18

EIGHTH CAUSE OF ACTION..... 21

PRAYER FOR RELIEF..... 23

DEMAND FOR JURY TRIAL..... 27

1 Plaintiff Samantha Joe Serrano (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant Hospital of Barstow, Inc. dba
6 Barstow Community Hospital, a California Corporation; and DOES 1 through 10, inclusive
7 (Hospital of Barstow, Inc. dba Barstow Community Hospital and Does 1 through 10 are
8 collectively referred to as “Defendants”) for California Labor Code violations and unfair
9 business practices stemming from Defendants’ failure to pay minimum and regular rate wages,
10 failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit
11 rest periods, failure to maintain accurate records of hours worked and meal periods, failure to
12 timely pay all wages to terminated employees, and failure to furnish accurate wage statements.

13 2. Plaintiff brings the First through Seventh Causes of Action individually and as a
14 class action on behalf of herself and certain current and former employees of Defendants
15 (hereinafter collectively referred to as the “Class” or “Class Members” and defined more fully
16 below). The Class consists of Plaintiff and all other persons who have been employed by any
17 Defendant in California and classified as a non-exempt employee during the statute of limitations
18 period applicable to the claims pleaded here.

19 3. Plaintiff brings the Eighth Cause of Action as a representative action under the
20 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to
21 Plaintiff, the State of California, and past and present employees of Defendants (hereinafter
22 referred to as the “Aggrieved Employees”) who also satisfy the definition of Class Member.

23 4. Defendants own/owned and operate/operated an industry, business, and
24 establishment within the State of California, including San Bernardino County. As such, and
25 based upon all the facts and circumstances incident to Defendants’ business in California,
26 Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial
27 Welfare Commission (“IWC”), and the California Business & Professions Code.

1 5. Despite these requirements, throughout the statutory period Defendants
2 maintained a systematic, company-wide policy and practice of:

- 3 (a) Failing to pay employees for all hours worked, including all minimum
4 wages, overtime wages, and double-time wages, in compliance with the
5 California Labor Code and IWC Wage Orders;
- 6 (b) Failing to maintain accurate records of the hours employees worked;
- 7 (c) Failing to provide employees with timely and duty-free meal periods in
8 compliance with the California Labor Code and IWC Wage Orders, failing
9 to maintain accurate records of all meal periods taken or missed, and
10 failing to pay an additional hour's pay at the regular rate of pay for each
11 workday a meal period violation occurred;
- 12 (d) Failing to authorize and permit employees to take timely and duty-free rest
13 periods in compliance with the California Labor Code and IWC Wage
14 Orders, and failing to pay an additional hour's pay at the regular rate of pay
15 for each workday a rest period violation occurred;
- 16 (e) Willfully failing to pay employees all minimum wages, overtime wages,
17 double-time wages, meal period premium wages, and rest period premium
18 wages due within the time period specified by California law when
19 employment terminates; and
- 20 (f) Failing to provide employees with accurate, itemized wage statements
21 containing all the information required by the California Labor Code and
22 IWC Wage Orders.

23 6. On information and belief, Defendants, and each of them were on actual and
24 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
25 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
26 willful and deliberate.

27 7. At all relevant times, Defendants were and are legally responsible for all of the
28 unlawful conduct, policies, practices, acts and omissions as described in each and all of the

1 foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are
2 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
3 “respondeat superior”.

4 **THE PARTIES**

5 **A. Plaintiff**

6 8. Plaintiff is a California resident who worked for Defendants in San Bernardino
7 County, California as a surgical technician from approximately June 2017 to March 27, 2019.

8 9. Plaintiff reserves the right to seek leave to amend this complaint to add new
9 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
10 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

11 **B. Defendants**

12 10. Plaintiff is informed and believes, and based upon that information and belief
13 alleges, that Defendant Hospital of Barstow, Inc. is, and at all times herein mentioned, was:

- 14 (a) A California corporation with its corporate headquarters and principal
15 place of business in San Bernardino, California.
- 16 (b) A business entity conducting business in numerous counties throughout the
17 State of California, including in San Bernardino County;
- 18 (c) The former employer of Plaintiff, and the current and/or former employer
19 of the putative Class. Hospital of Barstow, Inc. suffered and permitted
20 Plaintiff and the Class to work, and/or controlled their wages, hours, or
21 working conditions; and
- 22 (d) At all times herein mentioned is and was doing business as Barstow
23 Community Hospital.

24 11. Plaintiff does not know the true names or capacities of the persons or entities sued
25 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
26 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
27 Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true
28

1 names and capacities of these Defendants when they have been ascertained, together with
2 appropriate charging allegations, as may be necessary.

3 12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
4 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
5 and/or injured a significant number of the Plaintiff and the Class in the State of California.

6 13. Plaintiff is informed and believes and thereon alleges that at all relevant times
7 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
8 the other employees described in the class definitions below, and exercised control over their
9 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
10 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer,
11 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
12 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
13 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
14 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
15 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
16 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
17 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
18 abetted the conduct of all other Defendants.

19 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

20 14. Plaintiff Samantha Joe Serrano worked for Defendants in San Bernardino County,
21 California as a surgical technician from approximately June 2017 to March 27, 2019. At all times
22 Defendants classified Plaintiff as non-exempt from California's overtime requirements. During
23 the statutory time period, Plaintiff was typically scheduled to work 5 days in a workweek, and
24 typically in excess of 8 hours per workday.

25 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
26 worked (including minimum wage and overtime wages), failed to provide Plaintiff with
27 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
28 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all

1 final wages to Plaintiff when Defendants terminated Plaintiff’s employment, and failed to furnish
2 accurate wage statements to Plaintiff. As discussed below, Plaintiff’s experience working for
3 Defendants was typical and illustrative.

4 16. Throughout the statutory period, Defendants maintained a policy and practice of
5 failing to pay Plaintiff and the Class for all hours worked, including straight time and overtime.
6 Defendants failed to adequately track, record and pay for all minutes worked through, for
7 example, requiring or permitting ‘off the clock’ work and by its rounding timekeeping practices.
8 Defendants also regularly required Plaintiff and the Class to be on-call, including while at home,
9 on-site or at hotels. During the hotel stays for example, Plaintiff and the Class were unable to
10 leave the hotel and were required to remain on-call at all times. Despite being on call day and
11 night, Plaintiff and the Class were not paid correct straight and overtime wages for all hours
12 worked. Defendants further failed to include all required forms of compensation earned in the
13 calculation of the regular rate of pay, resulting in the underpayment of overtime wages, premium
14 wages, and bonuses and other wages. In failing to pay all wages owed, and by failing to regularly
15 itemize all items required by Labor Code section 226, Defendants failed to maintain accurate
16 records of the hours Plaintiff and the Class worked.

17 17. Throughout the statutory period, Defendants have wrongfully failed to provide
18 Plaintiff and the Class with legally compliant meal periods. Defendants regularly, but not
19 always, required Plaintiff and the Class to work in excess of five consecutive hours a day without
20 providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours
21 of work, or without compensating Plaintiff and the Class for meal periods that were not provided
22 by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform
23 Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of work, or,
24 for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did
25 not have adequate written policies or practices providing meal periods for Plaintiff and the Class,
26 nor did Defendants have adequate policies or practices regarding the timing of meal periods.
27 Defendants also did not have adequate policies or practices to document and verify whether
28 Plaintiff and the Class were taking their required meal periods. Accordingly, Defendants’ policy

1 and practice was to not provide meal periods to Plaintiff and the Class in compliance with
2 California law.

3 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
4 and permit Plaintiff and the Class to take timely and duty-free rest periods. Defendants
5 regularly, but not always, required Plaintiff and the Class to work in excess of four consecutive
6 hours a day without Defendants authorizing and permitting them to take a 10-minute, continuous
7 and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or
8 without compensating Plaintiff and the Class for rest periods that were not authorized or
9 permitted. Also, Plaintiff and the Class were required to request permission in order to take rest
10 breaks, but were often unable to receive permission due to the workload. Accordingly,
11 Defendants' policy and practice was to not authorize and permit Plaintiff and the Class to take
12 rest periods in compliance with California law.

13 19. Throughout the statutory period, Defendants willfully failed and refused to timely
14 pay Plaintiff and the Class at the conclusion of their employment all wages, including straight
15 time wages, overtime wages, double-time wages, meal period premium wages, and rest period
16 premium wages.

17 20. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
18 Class with accurate, itemized wage statements showing all time worked, all applicable hourly
19 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
20 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
21 provided in accordance with California law, and correct wages for rest periods that were not
22 authorized and permitted to take in accordance with California law). As a result of these
23 violations of California Labor Code § 226(a), Plaintiff and the Class suffered injury because,
24 among other things:

- 25 (a) the violations led them to believe that they were not entitled to be paid
26 minimum wages, overtime wages, meal period premium wages, and rest
27 period premium wages to which they were entitled, even though they were
28 entitled;

- 1 (b) the violations led them to believe that they had been paid the minimum,
2 overtime, meal period premium, and rest period premium wages to which
3 they were entitled, even though they had not been;
- 4 (c) the violations led them to believe they were not entitled to be paid
5 minimum, overtime, meal period premium, and rest period premium wages
6 at the correct California rate even though they were;
- 7 (d) the violations led them to believe they had been paid minimum, overtime,
8 meal period premium, and rest period premium wages at the correct
9 California rate even though they had not been;
- 10 (e) the violations hindered them from determining the amounts of minimum,
11 overtime, meal period premium, and rest period premium owed to them;
- 12 (f) in connection with their employment before and during this action, and in
13 connection with prosecuting this action, the violations caused them to have
14 to perform mathematical computations to determine the amounts of wages
15 owed to them, computations they would not have to make if the wage
16 statements contained the required accurate information;
- 17 (g) by understating the wages truly due them, the violations caused them to
18 lose entitlement and/or accrual of the full amount of Social Security,
19 disability, unemployment, and other governmental benefits;
- 20 (h) the wage statements inaccurately understated the wages, hours, and wage
21 rates to which Plaintiff and the Class were entitled, and Plaintiff and the
22 Class were paid less than the wages and wage rates to which they were
23 entitled.

24 Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code §
25 226(e).

26 **CLASS ACTION ALLEGATIONS**

27 21. Plaintiff brings certain claims individually, as well as on behalf of each and all
28 other persons similarly situated, and thus, seeks class certification under California Code of Civil

1 Procedure § 382.

2 22. All claims alleged herein arise under California law for which Plaintiff seeks relief
3 authorized by California law.

4 23. The proposed Class consists of and is defined as:

5 All persons who worked for any Defendants in California as an hourly-paid, non-
6 exempt employee at any time during the period beginning four years before the
7 filing of the initial complaint in this action and ending when notice to the Class is
8 sent.

8 24. At all material times, Plaintiff was a member of the Class.

9 25. Plaintiff undertakes this concerted activity to improve the wages and working
10 conditions of all Class Members.

11 26. There is a well-defined community of interest in the litigation and the Class is
12 readily ascertainable:

13 (a) Numerosity: The members of the Class (and each subclass, if any) are so
14 numerous that joinder of all members would be unfeasible and impractical.
15 The membership of the entire Class is unknown to Plaintiff at this time,
16 however, the Class is estimated to be greater than 100 individuals and the
17 identity of such membership is readily ascertainable by inspection of
18 Defendants' records.

19 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
20 the interests of each Class Member with whom there is a shared, well-
21 defined community of interest, and Plaintiff's claims (or defenses, if any)
22 are typical of all Class Members' claims as demonstrated herein.

23 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
24 the interests of each Class Member with whom there is a shared, well-
25 defined community of interest and typicality of claims, as demonstrated
26 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
27 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
28 the rules governing class action discovery, certification, and settlement.

1 Plaintiff has incurred, and throughout the duration of this action, will
2 continue to incur costs and attorneys' fees that have been, are, and will be
3 necessarily expended for the prosecution of this action for the substantial
4 benefit of each class member.

5 (d) Superiority: A Class Action is superior to other available methods for the
6 fair and efficient adjudication of the controversy, including consideration
7 of:

- 8 1) The interests of the members of the Class in individually
9 controlling the prosecution or defense of separate actions;
- 10 2) The extent and nature of any litigation concerning the controversy
11 already commenced by or against members of the Class;
- 12 3) The desirability or undesirability of concentrating the litigation of
13 the claims in the particular forum; and
- 14 4) The difficulties likely to be encountered in the management of a
15 class action.

16 (e) Public Policy Considerations: The public policy of the State of California
17 is to resolve the California Labor Code claims of many employees through
18 a class action. Indeed, current employees are often afraid to assert their
19 rights out of fear of direct or indirect retaliation. Former employees are
20 also fearful of bringing actions because they believe their former
21 employers might damage their future endeavors through negative
22 references and/or other means. Class actions provide the class members
23 who are not named in the complaint with a type of anonymity that allows
24 for the vindication of their rights at the same time as their privacy is
25 protected.

26 27. There are common questions of law and fact as to the Class (and each subclass, if
27 any) that predominate over questions affecting only individual members, including without
28 limitation, whether, as alleged herein, Defendants have:

- 1 (a) Failed to pay Class Members for all hours worked, including minimum
- 2 wages, overtime wages, and double-time wages;
- 3 (b) Failed to provide meal periods and pay meal period premium wages to
- 4 Class Members;
- 5 (c) Failed to authorize and permit rest periods and pay rest period premium
- 6 wages to Class Members;
- 7 (d) Failed to promptly pay all wages due to Class Members upon their
- 8 discharge or resignation;
- 9 (e) Failed to provide Class Members with accurate wages statements;
- 10 (f) Failed to maintain accurate records of all hours Class Members worked,
- 11 and all meal periods Class Members took or missed; and
- 12 (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a
- 13 result of their illegal conduct as described above.

14 28. This Court should permit this action to be maintained as a class action pursuant to
15 California Code of Civil Procedure § 382 because:

- 16 (a) The questions of law and fact common to the Class predominate over any
- 17 question affecting only individual members;
- 18 (b) A class action is superior to any other available method for the fair and
- 19 efficient adjudication of the claims of the members of the Class;
- 20 (c) The members of the Class are so numerous that it is impractical to bring all
- 21 members of the class before the Court;
- 22 (d) Plaintiff, and the other members of the Class, will not be able to obtain
- 23 effective and economic legal redress unless the action is maintained as a
- 24 class action;
- 25 (e) There is a community of interest in obtaining appropriate legal and
- 26 equitable relief for the statutory violations, and in obtaining adequate
- 27 compensation for the damages and injuries for which Defendants are
- 28 responsible in an amount sufficient to adequately compensate the members

1 of the Class for the injuries sustained;

2 (f) Without class certification, the prosecution of separate actions by
3 individual members of the class would create a risk of:

4 1) Inconsistent or varying adjudications with respect to individual
5 members of the Class which would establish incompatible standards
6 of conduct for Defendants; and/or

7 2) Adjudications with respect to the individual members which would,
8 as a practical matter, be dispositive of the interests of other
9 members not parties to the adjudications, or would substantially
10 impair or impede their ability to protect their interests, including but
11 not limited to the potential for exhausting the funds available from
12 those parties who are, or may be, responsible Defendants; and,

13 (g) Defendants have acted or refused to act on grounds generally applicable to
14 the Class, thereby making final injunctive relief appropriate with respect to
15 the class as a whole.

16 29. Plaintiff contemplates the eventual issuance of notice to the proposed members of
17 the Class that would set forth the subject and nature of the instant action. The Defendants' own
18 business records may be utilized for assistance in the preparation and issuance of the
19 contemplated notices. To the extent that any further notices may be required, Plaintiff would
20 contemplate the use of additional techniques and forms commonly used in class actions, such as
21 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by
22 other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

23 **FIRST CAUSE OF ACTION**

24 **(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)**

25 30. Plaintiff incorporates by reference and re-alleges as if fully stated herein
26 paragraphs 1 through 20 in this Third Amended Complaint.

1 31. “Hours worked” is the time during which an employee is subject to the control of
2 an employer, and includes all the time the employee is suffered or permitted to work, whether or
3 not required to do so.

4 32. At all relevant times herein mentioned, Defendants knowingly failed to pay to
5 Plaintiff and the Class compensation for all hours they worked, at the correct rate of pay. By
6 their failure to pay compensation for each hour worked as alleged above, Defendants willfully
7 violated the provisions of Section 1194 of the California Labor Code, and any additional
8 applicable Wage Orders, which require such compensation to non-exempt employees.

9 33. Accordingly, Plaintiff and the Class are entitled to recover minimum wages for all
10 non-overtime hours worked for Defendants.

11 34. By and through the conduct described above, Plaintiff and the Class have been
12 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

13 35. By virtue of the Defendants’ unlawful failure to correctly pay compensation to
14 Plaintiff and the Class for their non-overtime hours worked, Plaintiff and the Class suffered, and
15 will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the
16 Class, but which exceed the jurisdictional minimum of this Court, and which will be ascertained
17 according to proof at trial.

18 36. By failing to keep adequate time records required by California Labor Code §
19 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
20 compensation due Plaintiff and the Class.

21 37. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are
22 entitled to recover liquidated damages (double damages) for Defendants’ failure to pay minimum
23 wages.

24 38. California Labor Code section 204 requires employers to provide employees with
25 all wages due and payable twice a month. Throughout the statute of limitations period applicable
26 to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates
27 required by law, including minimum wages. However, during all such times, Defendants
28

1 systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to
2 pay those wages twice a month.

3 39. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum
4 wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§
5 218.5, 218.6, and 1194(a).

6 **SECOND CAUSE OF ACTION**

7 **(Against all Defendants for Failure to Pay Overtime Wages)**

8 40. Plaintiff incorporates by reference and re-alleges as if fully stated herein
9 paragraphs 1 through 20 in this Third Amended Complaint.

10 41. California Labor Code § 510 provides that employees in California shall not be
11 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
12 they receive additional compensation beyond their regular wages in amounts specified by law.

13 42. California Labor Code §§ 1194 and 1198 provide that employees in California
14 shall not be employed more than eight hours in any workday unless they receive additional
15 compensation beyond their regular wages in amounts specified by law. Additionally, California
16 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed
17 by the Industrial Welfare Commission is unlawful.

18 43. At all times relevant hereto, Plaintiff and the Class have worked more than eight
19 hours in a workday, as employees of Defendants, for which they were not compensated, or not
20 compensated at the correct rate. Defendant failed to include all required forms of compensation
21 in the regular rate of pay, including but not limited to, commissions, bonuses, differentials and/or
22 applicable premiums.

23 44. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class full
24 and correctly calculated overtime compensation for the hours they have worked in excess of the
25 maximum hours permissible by law as required by California Labor Code § 510 and 1198.
26 Plaintiff and the Class are regularly required to work overtime hours.

27 45. By virtue of Defendants' unlawful failure to pay additional premium rate
28 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the

1 Class have suffered, and will continue to suffer, damages in amounts which are presently
2 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
3 ascertained according to proof at trial.

4 46. By failing to keep adequate time records required by Labor Code § 1174(d),
5 Defendants have made it difficult to calculate the full extent of overtime compensation due to
6 Plaintiff and the Class.

7 47. Plaintiff and the Class also request recovery of overtime compensation according
8 to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
9 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
10 California Labor Code and/or other statutes.

11 48. California Labor Code § 204 requires employers to provide employees with all
12 wages due and payable twice a month. The Wage Orders also provide that every employer shall
13 pay to each employee, on the established payday for the period involved, overtime wages for all
14 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
15 with all compensation due, in violation of California Labor Code § 204.

16 **THIRD CAUSE OF ACTION**

17 **(Against All Defendants for Failure to Provide Meal Periods)**

18 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein
19 paragraphs 1 through 20 in this Third Amended Complaint.

20 50. Under California law, Defendants have an affirmative obligation to relieve the
21 Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the
22 start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal
23 periods no later than the start of the eleventh hour of work in the workday. Section 512 of the
24 California Labor Code, and Section 11 of the applicable Wage Orders require that an employer
25 provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a
26 violation of Section 226.7 of the California Labor Code for an employer to require any employee
27 to work during any meal period mandated under any Wage Order.
28

1 and the Class have suffered injury and damage to their statutorily-protected rights.

2 68. Specifically, Plaintiff and the members of the Class have been injured by
3 Defendants' intentional violation of California Labor Code § 226(a) because they were denied
4 both their legal right to receive, and their protected interest in receiving, accurate, itemized wage
5 statements under California Labor Code § 226(a).

6 69. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and
7 time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as
8 a result of having to bring this action to attempt to obtain correct wage information following
9 Defendants' refusal to comply with many of the mandates of California's Labor Code and related
10 laws and regulations.

11 70. Plaintiff and the Class are entitled to recover from Defendants the greater of their
12 actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or
13 an aggregate penalty not exceeding four thousand dollars per employee.

14 71. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
15 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor
16 Code § 226(h).

17 **SEVENTH CAUSE OF ACTION**

18 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200,**
19 **et seq.)**

20 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein
21 paragraphs 1 through 20 in this Third Amended Complaint.

22 73. Defendants, and each of them, are "persons" as defined under California Business
23 & Professions Code § 17201.

24 74. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
25 unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seek
26 to enforce important rights affecting the public interest within the meaning of Code of Civil
27 Procedure § 1021.5.

28 75. Defendants' activities, as alleged herein, are violations of California law, and

1 constitute unlawful business acts and practices in violation of California Business & Professions
2 Code §§ 17200, *et seq.*

3 76. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code, are unlawful and in violation of
6 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
7 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
8 California Business & Professions Code §§ 17200, *et seq.*

9 **Failure to Pay Minimum Wages**

10 77. Defendants' failure to pay minimum wages, and other benefits in violation of the
11 California Labor Code constitutes unlawful and/or unfair activity prohibited by California
12 Business & Professions Code §§ 17200, *et seq.*

13 **Failure to Pay Overtime Wages**

14 78. Defendants' failure to pay overtime compensation and other benefits in violation
15 of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
16 prohibited by California Business & Professions Code §§ 17200, *et seq.*

17 **Failure to Maintain Accurate Records of All Hours Worked**

18 79. Defendants' failure to maintain accurate records of all hours worked in accordance
19 with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or
20 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

21 **Failure to Provide Meal Periods**

22 80. Defendants' failure to provide meal periods in accordance with California Labor
23 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
24 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

25 **Failure to Maintain Accurate Records of Meal Periods**

26 81. Defendants' failure to maintain accurate records of employee meal periods in
27 accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above,
28 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code

1 §§ 17200, *et seq.*

2 **Failure to Authorize and Permit Rest Periods**

3 82. Defendants' failure to authorize and permit rest periods in accordance with
4 California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful
5 and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

6 **Failure to Provide Accurate Itemized Wage Statements**

7 83. Defendants' failure to provide accurate itemized wage statements in accordance
8 with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
9 prohibited by California Business & Professions Code §§ 17200, *et seq.*

10 84. By and through their unfair, unlawful and/or fraudulent business practices
11 described herein, the Defendants, have obtained valuable property, money and services from
12 Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly
13 situated, of valuable rights and benefits guaranteed by law, all to their detriment.

14 85. Plaintiff and the Class Members suffered monetary injury as a direct result of
15 Defendants' wrongful conduct.

16 86. Plaintiff, individually, and on behalf of members of the putative Class, are entitled
17 to, and do, seek such relief as may be necessary to disgorge money and/or property which the
18 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
19 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
20 the Class are not obligated to establish individual knowledge of the wrongful practices of
21 Defendants in order to recover restitution.

22 87. Plaintiff, individually, and on behalf of members of the putative class, are further
23 entitled to and do seek a declaration that the above described business practices are unfair,
24 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
25 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
26 practices in the future.

27 88. Plaintiff, individually, and on behalf of members of the putative class, have no
28 plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members

1 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business
2 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
3 above, Plaintiff, individually, and on behalf of members of the putative Class, suffered and will
4 continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from
5 continuing to engage in said unfair, unlawful and/or fraudulent business practices.

6 89. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
7 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
8 withholdings.

9 90. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff
10 and putative Class Members are entitled to restitution of the wages withheld and retained by
11 Defendants during a period that commences four years prior to the filing of the initial complaint;
12 a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
13 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
14 1021.5 and other applicable laws; and an award of costs.

15 **EIGHTH CAUSE OF ACTION**

16 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of** 17 **2004, Cal. Lab. Code § 2698, *et seq.*)**

18 91. Plaintiff incorporates by reference and re-allege as if fully stated herein paragraphs
19 1 through 20 in this Third Amended Complaint.

20 92. At all times herein mentioned, Defendants were subject to the Labor Code of the
21 State of California and the applicable Industrial Welfare Commission Orders.

22 93. California Labor Code § 2699(a) specifically provides for a private right of action
23 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of
24 law, any provision of this code that provides for a civil penalty to be assessed and collected by
25 the Labor and Workforce Development Agency or any of its departments, divisions,
26 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
27 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
28

1 herself and other current or former employees pursuant to the procedures specified in Section
2 2699.3.”

3 94. Plaintiff has exhausted her administrative remedies pursuant to California Labor
4 Code § 2699.3. On March 25, 2021, Plaintiff gave written amended notice by online filing to the
5 Labor and Workforce Development Agency and by certified mail to Defendants of the specific
6 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
7 former aggrieved employees, including the facts and theories to support the violations. (See
8 attached as **Exhibit A**). Plaintiff’s PAGA case number is No. LWDA-CM776285-20. More than
9 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce Development
10 Agency has not indicated that it intends to investigate Defendants’ Labor Code violations
11 discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties
12 under Labor Code § 2699, pursuant to section 2699.3, for the violations of the Labor Code
13 described in this Complaint. These penalties include, but are not limited to, penalties under
14 California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

15 95. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
16 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
17 employing labor who willfully fails to maintain accurate and complete records required by
18 California Labor Code § 1174 is subject to a penalty under section 1174.5. Pursuant to the
19 applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the
20 employee begins and ends each work period. Meal periods, and total hours worked daily shall
21 also be recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer
22 shall keep total hours worked in the payroll period and applicable rates of pay.

23 96. During the time period of employment for Plaintiff and the Aggrieved Employees,
24 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
25 maintain accurate records showing meal periods, and accurate records showing when employees
26 begin and end each work period. Defendants’ failure to provide and maintain records required by
27 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
28 know, understand and question the accuracy and frequency of meal periods, and the accuracy of

1 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
2 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
3 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
4 Employees have suffered and continue to suffer, substantial losses related to the use and
5 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
6 to compel Defendants to fully perform its obligation under state law, all to their respective
7 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
8 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
9 Employees have also suffered an injury in that they were prevented from knowing,
10 understanding, and disputing the wage payments paid to them.

11 97. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
12 of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees
13 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
14 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

15 98. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
16 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in
17 any action shall be entitled to an award of reasonable attorney's fees and costs."

18 **PRAYER FOR RELIEF**

19 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
20 the class claims, pray for relief and judgment against Defendants, jointly and severally, as
21 follows:

22 **Class Certification**

- 23 1. That this action be certified as a class action with respect to the First, Second,
24 Third, Fourth, Fifth, Sixth, and Eighth Causes of Action;
- 25 2. That Plaintiff be appointed as the representative of the Class; and
- 26 3. That counsel for Plaintiff be appointed as Class Counsel.

27 **As to the First Cause of Action**

- 28 4. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all
2 minimum wages due;

3 5. For general unpaid wages as may be appropriate;

4 6. For pre-judgment interest on any unpaid compensation commencing from the date
5 such amounts were due;

6 7. For liquidated damages;

7 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code § 1194(a); and,

9 9. For such other and further relief as the Court may deem equitable and appropriate.

10 As to the Second Cause of Action

11 10. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
13 overtime wages due;

14 11. For general unpaid wages at overtime wage rates as may be appropriate;

15 12. For pre-judgment interest on any unpaid overtime compensation commencing
16 from the date such amounts were due;

17 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
18 California Labor Code § 1194(a); and,

19 14. For such other and further relief as the Court may deem equitable and appropriate.

20 As to the Third Cause of Action

21 15. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

23 16. For unpaid meal period premium wages as may be appropriate;

24 17. For pre-judgment interest on any unpaid compensation commencing from the date
25 such amounts were due;

26 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
27 and for costs of suit incurred herein; and

28 19. For such other and further relief as the Court may deem equitable and appropriate.

1 As to the Fourth Cause of Action

2 20. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

4 21. For unpaid rest period premium wages as may be appropriate;

5 22. For pre-judgment interest on any unpaid compensation commencing from the date
6 such amounts were due;

7 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
8 and for costs of suit incurred herein; and

9 24. For such other and further relief as the Court may deem equitable and appropriate.

10 As to the Fifth Cause of Action

11 25. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
13 termination of the employment;

14 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
15 employees who have left Defendants' employ;

16 27. For pre-judgment interest on any unpaid wages from the date such amounts were
17 due;

18 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

19 29. For such other and further relief as the Court may deem equitable and appropriate.

20 As to the Sixth Cause of Action

21 30. That the Court declare, adjudge and decree that Defendants violated the record
22 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
23 willfully failed to provide accurate itemized wage statements thereto;

24 31. For statutory penalties and actual damages pursuant to California Labor Code §
25 226(e);

26 32. For injunctive relief to ensure compliance with this section, pursuant to California
27 Labor Code § 226(h);

28 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

Exhibit “A”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.moon@moonyanglaw.com

March 25, 2021

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Hospital of Barstow, Inc.
dba Barstow Community Hospital
1573 Mallory Lane, Suite 100
Brentwood, TN 37027

Amended Notice of Labor Code Violations and PAGA Penalties

Re: ***Samantha Joe Serrano v. Hospital of Barstow, Inc. dba Barstow Community Hospital***

To Whom It May Concern:

Please be advised that my office has been retained by Samantha Joe Serrano (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Hospital of Barstow, Inc. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a surgical technician from approximately June 2017 to March 27, 2019, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). For example, Defendants regularly required Plaintiff and the Class to be on-call, including while waiting up to 48 hours at hotels. During the hotel stays for example, Plaintiff and the Class were unable to leave the hotel and were required to remain on-call at all times. Despite being on call day and night, Plaintiff and the Class were not paid overtime wages. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours).

Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the

wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a 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 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 hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
6. Labor Code § 226 by failing to provide accurate itemized wage statements; and
7. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

LWDA
Amended Notice of Labor Code Violations and PAGA
March 25, 2021
Page 8 of 8

MOON & YANG, APC



Kane Moon
Attorney at Law



MOON & YANG, APC
 ATTORNEYS AT LAW
 1055 W. SEVENTH STREET, SUITE 1880, LOS ANGELES, CA 90017

Hospital of Barstow, Inc. dba Barstow.
 1573 Mallory Lane, Suite 100
 Brentwood TN 37027-2895

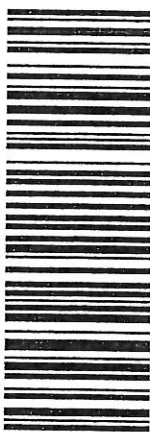


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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Hospital of Barstow Inc.
 dba Barstow Community Hosp
 1573 Mallory Lane, Suite 100
 Brentwood, TN 37027



9590 9402 5711 9346 4770 42

2. Article Number (Transfer from service label)

7019 2970 0001 5132 4285

PS Form 3811, July 2015 PSN 7530-02-000-9055

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Received by (Printed Name) Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

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- Adult Signature Registered Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
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Hospital of Barstow, Inc. dba...
 1573 Mallory Lane, Suite 100
 Brentwood, TN 37027

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

5824 2ET5 1000 0L62 610L

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
7 1880, Los Angeles, California 90017. On June-13-22, I served the foregoing document
8 described as:

9 **THIRD AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

10 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
11 addressed as follows:

12 *Attorneys for Defendant*

13 Amanda C. Sommerfeld (State Bar No. 185052)
14 Amanda W. Molinari (State Bar No. 323840)

15 **JONES DAY**

16 555 South Flower Street
17 Los Angeles, CA 90071-2300
18 Telephone:(213) 243-2357
19 Email: amolinari@jonesday.com
20 Email: asommerfeld@jonesday.com
21 Email: sgarrett@jonesday.com

22 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
23 California, by e-mail delivery on the parties listed herein at their most recent
24 known e-mail address or e-mail of record in this action.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed this **June** ___, **2022**, at Los Angeles, California.

28 _____
29 Jessica Flores

Name

Signature