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ATTORNEYS FOR PLAINTIFF

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

KAREN MARTINEZ, on behalf of herself  
and all other similarly situated individuals,

Plaintiff,

vs.

JOHN MUIR HEALTH, and DOES 1  
through 50, inclusive,

Defendants.

Case No.

**COLLECTIVE, CLASS, AND  
REPRESENTATIVE ACTION  
COMPLAINT**

- 1) Failure to Pay Wages for All Hours Worked in Violation of 29 U.S.C. § 201, et. seq;
- 2) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 3) Failure to Pay Minimum Wages in Violation of the California Labor Code;
- 4) Failure to Pay Overtime Wages in Violation of the California Labor Code;
- 5) Meal and Rest Period Violations;
- 6) Failure to Provide Accurate Wage Statements in Violation of the California Labor Code;
- 7) Failure to Timely Pay All Wages Due and Owing in Violation of the California Labor Code;
- 8) Violating Private Attorney Generals Act; and
- 9) Unfair Business Practices.

**JURY TRIAL DEMANDED**

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1 Plaintiff KAREN MARTINEZ (“Plaintiff”), on behalf of herself, the general public, and  
2 all other similarly situated and typical persons, alleges the following:

3 All allegations in this Complaint are based upon information and belief except for those  
4 allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in this  
5 Complaint either has evidentiary support or is likely to have evidentiary support after a  
6 reasonable opportunity for further investigation and discovery.

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction over the federal claims alleged herein  
9 pursuant to the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 216(b) which states: “An action  
10 to recover the liability prescribed in either of the preceding sentences may be maintained against  
11 any employer (including a public agency) in any Federal or State court of competent jurisdiction  
12 by any one or more employees for and in behalf of himself or themselves and others employees  
13 similarly situated.” Plaintiff has or will shortly file with this court a consent to join this action.

14 2. This Court has supplemental jurisdiction over the state law claims alleged herein  
15 pursuant to 28 U.S.C. § 1367 because the state law claims alleged herein all arise out of the  
16 same transaction and occurrence, i.e. the failure to properly pay all wages due—and there is no  
17 conflict between the procedures applicable to the FLSA and State law claims. *Integrity Staffing*  
18 *Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013) (“In sum, we agree  
19 with the other circuits to consider the issue that the fact that Rule 23 class actions use an opt-out  
20 mechanism while FLSA collective actions use an Opt-in mechanism does not create a conflict  
21 warranting dismissal of the state law claims.”)

22 3. Venue is proper in this Court because one or more of the Defendants named  
23 herein maintains a principal place of business or otherwise is found in this judicial district and  
24 many of the acts complained of herein occurred in Contra Costa County, California, which is  
25 located within this district.

26 **PARTIES**

27 4. Plaintiff KAREN MARTINEZ is natural person was employed by Defendant  
28 within the State of California for 19 years from May 1, 1997 to February 19, 2016.

1 5. Defendant JOHN MUIR HEALTH (“John Muir” or “Defendant”) is a California  
2 corporation with its principle place of business at 1400 Treat Boulevard, Walnut Creek  
3 California, 94597.

4 6. The identity of DOES 1-50 is unknown at this time, and this Complaint will be  
5 amended at such time when the identities are known to Plaintiff. Plaintiff is informed and  
6 believes that each of the Defendants sued herein as DOE is responsible in some manner for the  
7 acts, omissions, or representations alleged herein and any reference to “Defendant,”  
8 “Defendants,” or “John Muir” herein shall mean “Defendants and each of them.”

9 **PROCEDURAL POSTURE**

10 7. Plaintiff filed the requisite letter to California’s Labor Workforce Development  
11 Agency (LWDA) on October 13, 2016 pursuant to California Labor Code § 2699, *et seq.* A  
12 true and correct copy of the PAGA letter and enclosed draft complaint is attached hereto as  
13 Exhibit 1.

14 8. Plaintiff’s PAGA notice was assigned “LWDA Case No. LWDA-CM-162015-  
15 16. A true and correct copy of the PAGA letter confirmation is attached hereto as Exhibit 2.

16 9. Upon receipt of the Plaintiff’s PAGA letter, John Muir contacted Plaintiff’s  
17 counsel and the parties agreed to toll the statute of limitations on the claims of Plaintiff and all  
18 members of the putative class that she seeks to represent so as to engage in early settlement  
19 discussions. The tolling period commenced on October 13, 2016.

20 10. Pursuant to the parties’ tolling agreement, Plaintiff notified Defendant of its  
21 intent to terminate the tolling agreement on September 11, 2017.

22 11. Pursuant to the parties’ tolling agreement, Plaintiff and all members of the  
23 putative class continued to enjoy the tolling of their statute of limitations up to and including  
24 the date of October 11, 2017.

25 **FACTUAL ALLEGATIONS**

26 12. John Muir is a not-for-profit corporation that operates primarily in Contra Costa  
27 County. Plaintiff was employed by John Muir as a Case Manager. Plaintiff was an hourly paid  
28 non-exempt employee and earned \$78.00 per hour. Her regular schedule was 8:00 a.m. to 4:30

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1 p.m., with a 30-minute unpaid meal period. In addition to her hourly rate of pay, Plaintiff, and  
2 all other similarly situated individuals, also received the following non-discretionary bonuses  
3 (“Bonuses”) from Defendant:

4 a. **Success Sharing Bonus:** This is a yearly bonus given to all non-exempt  
5 employees based on the Defendant’s financial success for the year;

6 b. **Certification Bonus:** This is a yearly bonus given to all non-exempt  
7 employees whose job position requires a certification credential; and

8 c. **Top Range Bonus:** This is a yearly bonus given to all non-exempt  
9 employees who are at the top of the pay scale and no longer receive yearly base rate  
10 wage increases.

11 Upon information and belief, none of these Bonuses were not included in the regular rate of pay  
12 for overtime payment calculations for Plaintiff or any other member of the putative class  
13 members identified below. Plaintiff regularly worked overtime over 8-hours in a workday and  
14 over 40 hours in a workweek.

15 13. Beginning on or about the fall of 2013, Defendant instituted cost cutting  
16 measures that decreased Defendant’s labor force but substantially increased the employee to  
17 patient ratio. As a result of this policy change, Plaintiff and all other similarly situated  
18 employees, were required to perform numerous work duties “off the clock” so as to meet the  
19 new patient metrics. Plaintiff and all other similarly situated individuals would clock out at the  
20 end of the workday and would continue to input patient notes and process insurance claims.

21 14. Defendant maintained an electronic system called EPIC by which Plaintiff and  
22 all other similarly situated employees would record their notes and process insurance claims.  
23 The EPIC system would record the times in which Plaintiff and all other similarly situated  
24 employees would be entering data into the system. Defendant engaged Plaintiff and all others  
25 similarly situated to make entries into the EPIC system while at the employer’s place of  
26 employment.

27 15. Defendant and Defendant’s agents were aware that Plaintiff and all other  
28 similarly situated employees were working without compensation because employees were

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1 physically present at Defendant's facility and the EPIC system recorded the time when Plaintiff  
2 and similarly situated employees were working.

3 16. When comparing the difference between the time entries from EPIC to the time  
4 entries in the KRONOS (the electronic system used to record employee work hours for payroll  
5 purposes), Plaintiff and all other similarly situated employees worked a significant amount of  
6 time "off-the-clock".

7 17. Despite knowing that Plaintiff and other similarly situated individuals were  
8 performing work off-the-clock and without compensation, Defendant failed to prevent the  
9 performance of such work. Defendant suffered and permitted Plaintiffs to continue doing  
10 uncompensated work that they were engaged to perform. In fact, Defendant's new cost cutting  
11 policy and increased employee to patient ratio resulted in even more the off-the-clock work  
12 being performed without compensation.

13 18. Plaintiff estimates that she was required to work approximately 300 hours off the  
14 clock and is owed approximately \$30,000 in unpaid wages.

15 19. In addition to suffering and permitting Plaintiff and all other similarly situated  
16 employees to perform work without compensation, John Muir also violated California's meal  
17 and rest break law by not providing a meal period within the requisite number of hours after the  
18 start of a shift; failing to provide a second meal period within the time proscribed by law, and  
19 by not permitting a full 30-minute uninterrupted meal period.

20 **COLLECTIVE, CLASS, AND REPRESENTATIVE ACTION ALLEGATIONS**

21 20. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
22 this Complaint as though fully set forth herein.

23 21. Plaintiff brings this action on behalf of herself and all other similarly situated  
24 and typical employees employed in California as both a collective action under the FLSA and a  
25 true class action under California law.

26 22. Plaintiff brings this action on behalf of herself and the following **FLSA Classes**:

- 27 a. **FLSA Regular Rate Class**: All nonexempt hourly paid employees  
28 employed by Defendant who received a non-discretionary bonus at any time

1 during the period of October 13, 2013 through to the date of judgment after  
2 trial.

- 3 b. **FLSA Off the Clock Class:** All nonexempt hourly paid employees  
4 employed by Defendant who worked off the clock as demonstrated by the  
5 comparison between the EPIC electronic system and KRONOS at any time  
6 during the period of October 13, 2013 through to the date of judgment after  
7 trial.

8 23. With regard to the conditional certification mechanism under the FLSA,  
9 Plaintiffs are similarly situated to those that they seek to represent for the following reasons,  
10 among others:

- 11 a. Defendants employed Plaintiff as an hourly-paid employee who did not  
12 receive her wages and, where applicable, overtime premium pay at one and  
13 one half times the regular rate of pay for all hours worked over forty (40)  
14 hours in a workweek.
- 15 b. Plaintiff's situation is similar to those she seeks to represent because  
16 Defendants failed to pay Plaintiff and all other FLSA Off the Clock  
17 Members for all time they were required to work, but with the knowledge  
18 acquiescence and/or approval (tactic as well as expressed) of Defendants'  
19 managers and agents, and Defendants failed to pay Plaintiff and all other  
20 FLSA Regular Rate Class Members their correct overtime rate when they  
21 worked over 40 hours in a workweek.
- 22 c. Common questions exist as to: 1) Whether Plaintiff and all other FLSA Off  
23 the Clock Class Members worked off the clock and without compensation  
24 and 2) Whether Defendant failed to pay Plaintiff and FLSA Regular Rate  
25 Class Members their correct overtime rate of pay.
- 26 d. Upon information and belief, Defendants employ, and has employed, in  
27 excess of 1,000 FLSA Class Members within the applicable statute of  
28 limitations.

- 1 e. Plaintiff has signed a Consent to Sue form, which attached hereto as Exhibit  
2 3. Consent to sue forms are not required for state law claims under Rule 23  
3 of the Nevada Rules of Civil Procedure.

4 24. Plaintiff brings this action on behalf of herself and the following **California**  
5 **Classes:**

- 6 a. **California Regular Rate Class:** All nonexempt hourly paid employees  
7 employed by Defendant who received a non-discretionary bonus at any time  
8 during the period of October 13, 2012 through to the date of judgment after  
9 trial.
- 10 b. **California Off the Clock Class:** All nonexempt hourly paid employees  
11 employed by Defendant who worked off the clock as demonstrated by the  
12 comparison between the EPIC electronic system and KRONOS at any time  
13 during the period of October 13, 2012 through to the date of judgment after  
14 trial.
- 15 c. **California Meal/Rest Break Class:** All nonexempt hourly paid employees  
16 employed by Defendant at any time during the period of October 13, 2013  
17 through to the date of judgment after trial.

18 25. These Classes may be further subdivided into the following subclasses of  
19 similarly-situated and typical individuals based upon the divergent statute of limitations period  
20 for various claims asserted herein (collectively “the Subclasses” or “Subclass Members”):

- 21 a. **Itemized Wage Statement Subclass:** All Class Members who were  
22 employed at any time during the period of October 13, 2015 through to the  
23 date of judgment after trial.
- 24 b. **Waiting Time Penalties Subclass:** All Class Members who were employed  
25 at any time during the period of October 13, 2013 through to the date of  
26 judgment after trial.
- 27  
28

1 c. **PAGA Subclass:** All Class Members who were employed at any time  
2 during the period of October 13, 2015 through to the date of judgment after  
3 trial.

4 26. Class treatment is appropriate in this case for the following reasons:

5 A. The Class is Sufficiently Numerous: Upon information and belief,  
6 Defendant employs, and has employed, in excess of 1,000 Class Members within the  
7 applicable statute of limitations. Because Defendant is legally obligated to keep  
8 accurate payroll records, Plaintiff alleges that Defendant's records will establish the  
9 members of the Class as well as their numerosity.

10 B. Common Questions of Law and Fact Exist: Common questions of law  
11 and fact exist and predominate as to Plaintiff and Class Members, including, without  
12 limitation:

- 13 1) Whether Defendant failed to compensate Plaintiff and all members of the  
14 Class at the correct overtime rate by failing to include the Bonuses into  
15 the regular rate;
- 16 2) Whether Defendant failed to compensate Plaintiff and members of the  
17 Class for all the hours that they worked;
- 18 3) Whether Defendant's policy of not including the hours worked in a pay  
19 period on the pay stub violates the itemized wage statement provisions of  
20 the California Labor Code and the Orders of the California Industrial  
21 Wage Commission; and
- 22 4) Whether Defendant willfully failed to pay Class Members all wages due  
23 and owing at the time of termination.

24 C. Plaintiff's Claims are Typical to Those of Fellow Class Members:  
25 Plaintiff was not paid overtime on the Bonuses that were paid to members of the Class  
26 and performed work off the clock without compensation. Plaintiff's claims are typical  
27 to those of the class that she seeks to represent. In addition, Defendant did not give  
28 Plaintiff and Class Members accurate wage statements to reflect their hours worked, rate



1 of pay, and overtime compensation; and Defendant has not timely remit all wages due  
2 and owing to Plaintiff and Class Members who are former employees upon their  
3 termination.

4 D. Plaintiff is an Adequate Representative of the Class: Plaintiff will fairly  
5 and adequately represent the interests of Class Members because Plaintiff is a member  
6 of the Class, she has common issues of law and fact with all members of the Class, and  
7 her claims are typical to other Class Members.

8 E. A Class Action is Superior/Common Claims Predominate: A class action  
9 is superior to other available means for the fair and efficient adjudication of this  
10 controversy, since individual joinder of all members of the Class is impractical. Class  
11 action treatment will permit a large number of similarly situated persons to prosecute  
12 their common claims in a single forum simultaneously, efficiently, and without  
13 unnecessary duplication of effort and expense. Furthermore, the expenses and burden of  
14 individualized litigation would make it difficult or impossible for individual members of  
15 the Class to redress the wrongs done to them, while an important public interest will be  
16 served by addressing the matter as a class action. Individualized litigation would also  
17 present the potential for inconsistent or contradictory judgments.

18 **FIRST CAUSE OF ACTION**

19 **Failure to Pay Wages in Violation of the FLSA, 29 U.S.C. § 201, et seq.**

20 (On Behalf of Plaintiffs and all members of the FLSA Off the Clock Class Against Defendants)

21 27. Plaintiff realleges and incorporates by reference all the paragraphs above in the  
22 Complaint as though fully set forth herein.

23 28. Pursuant to the FLSA, 29 U.S.C. § 201, et seq., Plaintiff and all FLSA Off the  
24 Clock Class Members are entitled to compensation at their regular rate of pay or minimum  
25 wage rate, whichever is higher, for all hours actually worked.

26 29. Once the workday has begun, all time suffered or permitted by the employer to  
27 be worked by the employee is compensable at the employee’s regular rate of pay, whether  
28 scheduled or not.

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1 30. By failing to compensate Plaintiff and FLSA Off the Clock Class Members for  
2 all the time they were suffered and/or permitted to work, Defendants failed to pay Plaintiffs and  
3 the CLASS Members for all hours worked.

4 31. Defendants' unlawful conduct has been widespread, repeated, and willful.  
5 Defendants knew or should have known that its policies and practices have been unlawful and  
6 unfair.

7 32. Wherefore, Plaintiff demands for herself and for all others similarly situated,  
8 that Defendants pay Plaintiff and all other members of the FLSA Off the Clock Class the  
9 minimum hourly wage rate or their regular rate of pay, whichever is greater, for all hours  
10 worked during the relevant time period together with liquidated damages, attorneys' fees, costs,  
11 and interest as provided by law.

12 **SECOND CAUSE OF ACTION**

13 **Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207**

14 (On Behalf of Plaintiffs and all members of the FLSA Off the Clock Class and the FLSA  
15 Regular Rate Class Against Defendants)

16 33. Plaintiff realleges and incorporates by reference all the paragraphs above in the  
17 Complaint as though fully set forth herein.

18 34. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided  
19 in the section, no employer shall employ any of his employees who in any workweek is  
20 engaged in commerce or in the production of goods for commerce, or is employed in an  
21 enterprise engaged in commerce or in the production of goods for commerce, for a workweek  
22 longer than forty hours unless such employee receives compensation for his employment in  
23 excess of the hours above specified at a rate not less than one and one-half times the regular  
24 rate at which he is employed."

25 35. By failing to compensate Plaintiff and FLSA Off the Clock Class Members for  
26 all the time they were suffered and/or permitted to work, Defendants failed to pay Plaintiffs and  
27 FLSA Off the Clock Class Members overtime for all hours worked in excess of forty (40) hours  
28 in a week in violation of 29 U.S.C. Section 207(a)(1).

1 36. By failing to include the non-discretionary bonuses into the regular rate of pay  
2 for Plaintiff and member of the FLSA Regular Rate Class, Defendants failed to pay Plaintiffs  
3 and FLSA Regular Rate Class Members overtime for all hours worked in excess of forty (40)  
4 hours in a week in violation of 29 U.S.C. Section 207(a)(1).

5 37. Wherefore, Plaintiff demands for herself and for all others similarly situated,  
6 that Defendants pay Plaintiff and FLSA Off the Clock and Regular Rate Class Members one  
7 and one half times their regular hourly rate of pay for all hours worked in excess of forty (40)  
8 hours a week during the relevant time period together with liquidated damages, attorneys' fees,  
9 costs, and interest as provided by law.

10 **THIRD CAUSE OF ACTION**

11 **Failure to Pay Minimum Wages for All Hours Worked**

12 (On Behalf of Plaintiff and the California Off the Clock Class Against Defendants)

13 38. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
14 this Complaint as though fully set forth herein.

15 39. California Labor Code (hereinafter referred to as "Labor Code") § 1194 provides  
16 that "Notwithstanding any agreement to work for a lesser wage, any employee receiving less  
17 than the legal minimum wage or the legal overtime compensation applicable to the employee is  
18 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage  
19 or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of  
20 suit."

21 40. Labor Code § 1197 empowers the Industrial Welfare Commission to fix the  
22 minimum wage and states that "the payment of a less wage than the minimum so fixed is  
23 unlawful." Section 4 of applicable Wage Order No. 9 requires Defendants to pay its employees  
24 minimum wages for all hours worked.

25 41. Because Defendant failed to compensate Plaintiff and Class Members for their  
26 hours worked off the clock as set forth above, Defendant failed to pay Plaintiff and Class  
27 Members the required minimum wage rate for each hour worked.

1           42. Labor Code § 1194.2(a) provides that, in an action to recover wages because of  
2 the payment of a wage less than the minimum wage fixed by the IWC Wage Orders, an  
3 employee is entitled to recover liquidated damages in an amount equal to the wages unlawfully  
4 unpaid and interest thereon.

5           43. Plaintiff and Class Members should have received their regular rate of pay, or the  
6 minimum wage, whichever is higher, in a sum according to proof for the hours worked, but not  
7 compensated, during the Class Period. Defendant therefore owes Plaintiff and Class Members  
8 regular rate wages or minimum wages, whichever are higher, as well as liquidated damages in  
9 an equal amount to the wages owed, and has failed and refused, and continues to fail and refuse,  
10 to pay Plaintiff and Class Members the amounts owed.

11           44. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
12 herein, the Plaintiff and Class Members have sustained damages and been deprived of minimum  
13 wages and regular wages that are owed in amounts to be proven at trial, and are entitled to  
14 recovery of such amounts, plus interest, liquidated damages, and attorneys' fees and costs  
15 pursuant to Labor Code §§ 218.5, 1194, and 1194.2. Because Defendant's conduct described  
16 immediately above is an act of unfair competition and a business practice in violation of  
17 California Business & Professions Code § 17200, Plaintiff and Class Members are entitled to  
18 recover the amounts previously specified for four years prior to the filing of this complaint to  
19 the date of judgment after trial.

20           45. Defendant is also subject to civil penalties and restitution of wages payable to  
21 Plaintiff and all Class Members pursuant to Labor Code § 1179.1 as follows:

22  
23           (1) For any initial violation that is intentionally committed, one hundred dollars  
24 (\$100) for each underpaid employee for each pay period for which the employee is  
25 underpaid. This amount shall be in addition to an amount sufficient to recover  
underpaid wages.

26           (2) For each subsequent violation for the same specific offense, two hundred fifty  
27 dollars (\$250) for each underpaid employee for each pay period for which the  
28 employee is underpaid regardless of whether the initial violation is intentionally  
committed. This amount shall be in addition to an amount sufficient to recover  
underpaid wages.

1 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

2  
3 These penalties are in addition to any other penalty provided by law and are recoverable by  
4 private individuals on behalf of the state of California under the Private Attorney General  
5 Act, Labor Code § 2699, et. seq.

6 46. Defendant is also subject to civil penalties and restitution of wages payable to  
7 Plaintiff and all Class Members pursuant to Labor Code § 558 for violating the applicable  
8 Wage Order as follows:

9 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
10 pay period for which the employee was underpaid in addition to an amount sufficient  
11 to recover underpaid wages.

12 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
13 employee for each pay period for which the employee was underpaid in addition to an  
14 amount sufficient to recover underpaid wages.

15 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

16 These penalties are in addition to any other penalty provided by law and are recoverable by  
17 private individuals on behalf of the state of California under the Private Attorney General  
18 Act, Labor Code § 2699, et. seq.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Pay Overtime Wages for All Hours Worked**

21 (On Behalf of Plaintiff and the California Off the Clock Class and the California Regular Rate  
22 Class Against Defendant)

23 47. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
24 this Complaint as though fully set forth herein.

25 48. Labor Code §§ 510 and 1198, and Section 3 of applicable Wage Order No. 9,  
26 mandate that California employers pay overtime compensation at one and one half times the  
27 regular rate of pay to all non-exempt employees for all hours worked over eight (8) per day or  
28 over forty (40) per week and “any work in excess of 12 hours in one day shall be compensated

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1 at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in  
2 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no  
3 less than twice the regular rate of pay of an employee.” Section 3(A)(1) of the applicable Wage  
4 Order states in relevant part: “Employment beyond eight (8) hours in any workday or more than  
5 six (6) days in any workweek is permissible provided the employee is compensated for such  
6 overtime at not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay  
7 for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday,  
8 and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a  
9 workweek; and (b) Double the employee’s regular rate of pay for all hours worked in excess of  
10 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh  
11 (7th) consecutive day of work in a workweek.”

12 49. Labor Code § 1198 states that “The maximum hours of work and the standard  
13 conditions of labor fixed by the commission shall be the maximum hours of work and the  
14 standard conditions of labor for employees. The employment of any employee for longer hours  
15 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

16 50. Because Defendant failed to compensate Plaintiff and Class Members for their  
17 hours worked off the clock as set forth above, Defendant failed to pay Plaintiff and Class  
18 Members overtime compensation when due.

19 51. Also, because Defendant failed to include the Bonuses into the regular rate of  
20 pay in calculating the overtime rate for Plaintiff and Class Members as set forth above,  
21 Defendants failed to pay Plaintiff and Class Members their correct overtime rate.

22 52. Wherefore, Plaintiff demands for herself and for Class Members that Defendant  
23 pay Plaintiff and Class Members overtime pay at the applicable legal rate for all overtime hours  
24 worked together with attorneys’ fees, costs, and interest as provided by law. Because  
25 Defendant’s conduct described immediately above is an act of unfair competition and a business  
26 practice in violation of California Business & Professions Code § 17200, Plaintiff and Class  
27 Members are entitled to recover the amounts previously specified for four years prior to the  
28 filing of this complaint to the date of judgment after trial.

1 53. Defendant is also subject to civil penalties and restitution of wages payable to  
2 Plaintiff and all Class Members pursuant to Labor Code § 558 as follows:

3 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
4 pay period for which the employee was underpaid in addition to an amount sufficient  
5 to recover underpaid wages.

6 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
7 employee for each pay period for which the employee was underpaid in addition to an  
8 amount sufficient to recover underpaid wages.

9 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

10 These penalties are in addition to any other penalty provided by law and are recoverable by  
11 private individuals on behalf of the state of California under the Private Attorney General  
12 Act, Labor Code § 2699, et. seq.

13 **FIFTH CAUSE OF ACTION**

14 **Failure to Provide Meal/Rest Breaks**

15 (On Behalf of Plaintiff and the California Meal/Rest Break Class Against Defendant)

16 54. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
17 this Complaint as though fully set forth herein.

18 55. Section 11 of the applicable Wage Order states, in relevant part: “(A) No  
19 employer shall employ any person for a work period of more than five (5) hours without a meal  
20 period of not less than 30 minutes . . . If an employer fails to provide an employee a meal period  
21 in accordance with the applicable provisions of this order, the employer shall pay the employee  
22 one (1) hour of pay at the employee’s regular rate of compensation for each workday that the  
23 meal period is not provided.”

24 56. Labor Code § 226.7 states that: “a) No employer shall require any employee to  
25 work during any meal or rest period mandated by an applicable order of the Industrial Welfare  
26 Commission. (b) If an employer fails to provide an employee a meal period or rest period in  
27 accordance with an applicable order of the Industrial Welfare Commission, the employer shall  
28 pay the employee one additional hour of pay at the employee's regular rate of compensation for

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1 each work day that the meal or rest period is not provided.” California Labor Code § 229  
2 provides for a private right of action to enforce the provisions of Labor Code 226.7.

3 57. Labor Code § 512 provides in relevant part: “An employer may not employ an  
4 employee for a work period of more than 10 hours per day without providing the employee with  
5 a second meal period of not less than 30 minutes . . .”

6 58. As described above and demonstrated by the comparison of the EPIC and  
7 KRONOS electronic records, Plaintiff and California Meal/Rest Break Class Members routinely  
8 worked through meal and/or rest periods as required by Defendant, but were not compensated  
9 for the missed meal and/or rest period pursuant to 226.7.

10 59. Wherefore, Plaintiff demands payment for herself and all California Meal/Rest  
11 Break Class Members one hour pay per day for every missed mandatory meal and/or rest  
12 period, together with attorneys’ fees, costs, penalties, and interest as provided by law.

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Provide Accurate Wage Statements**

15 (On Behalf of Plaintiff and the Wage Statement Subclass Against Defendant)

16 60. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
17 this Complaint as though fully set forth herein.

18 61. Defendant knowingly and intentionally failed to provide timely, accurate,  
19 itemized wage statements showing, inter alia, hours worked, to Plaintiff and Class Members in  
20 accordance with Labor Code § 226(a) and applicable Wage Order No. 9. Such failure caused  
21 injury to Plaintiff and Class Members by, among other things, impeding them from knowing  
22 the amount of wages to which they are and were legally entitled.

23 62. Plaintiff’s good faith estimate of the number of pay periods in which Defendant  
24 failed to provide accurate itemized wage statements to Plaintiff and Class Members is each and  
25 every pay period during the Class Period.

26 63. Plaintiff and the Class Members are entitled to and seek injunctive relief  
27 requiring Defendant to comply with Labor Code §§ 226(a) and further seek the amount  
28 provided under Labor Code § 226(e), including the greater of all actual damages or fifty dollars



1 (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100)  
2 per employee for each violation in a subsequent pay period.

3 64. Defendant is also subject to civil penalties for Labor Code §§ 226(a) violations  
4 “in the amount of two hundred and fifty dollars (\$250) per employee per violation in an initial  
5 citation and one thousand (\$1,000) per employee for each violation in a subsequent citation . . .  
6 .” as provided by Labor Code §§ 226.3. These penalties are in addition to any other penalty  
7 provided by law and are recoverable by private individuals on behalf of the state of California  
8 under the Private Attorney General Act, Labor Code § 2699, et. seq.

9 65. Because Defendant’s conduct described immediately above is an act of unfair  
10 competition and a business practice in violation of California Business & Professions Code  
11 Section 17200, Plaintiff further demands the Defendant be enjoined from continuing to provide  
12 inaccurate pay statements that fail to include the amount of hours worked by each employee,  
13 the hourly rate of pay, and the amount of all overtime hours worked at the corresponding  
14 hourly rate.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure to Timely Pay All Wages Due and Owing**

17 (On Behalf of Plaintiff and the Waiting Time Penalties Subclass Against Defendant)

18 66. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
19 this Complaint as though fully set forth herein.

20 67. Labor Code §§ 201 and 202 require an employer to pay its employees all wages  
21 due within the time specified by law. Labor Code § 203 provides that if an employer willfully  
22 fails to timely pay such wages, the employer must continue to pay the subject employees'  
23 wages until the back wages are paid in full or an action is commenced, up to a maximum of  
24 thirty (30) days of wages.

25 68. Class Members who ceased employment with Defendant are entitled to unpaid  
26 compensation for unpaid minimum, regular, and overtime wages, as alleged above, but to date  
27 have not received such compensation. Defendant’s failure to pay such wages and  
28

1 compensation, as alleged above, was knowing and “willful” within the meaning of Labor Code  
2 § 203.

3 69. As a consequence of Defendant’s willful conduct in not paying compensation  
4 for all hours worked, Class Members whose employment ended within the last three years from  
5 the filing of this complaint are entitled to up to thirty days’ wages under Labor Code § 203,  
6 together with interest thereon and attorneys’ fees and costs.

7 **EIGHTH CAUSE OF ACTION**

8 **Violating California Private Attorney General Act**

9 (On Behalf of Plaintiff and the PAGA Subclass Against Defendant)

10 70. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
11 this Complaint as though fully set forth herein.

12 71. Labor Code § 2699(a) states:

13 Notwithstanding any other provision of law, any provision of this  
14 code that provides for a civil penalty to be assessed and collected by the  
15 Labor and Workforce Development Agency or any of its departments,  
16 divisions, commissions, boards, agencies, or employees, for a violation of  
17 this code, may, as an alternative, be recovered through a civil action  
18 brought by an aggrieved employee on behalf of himself or herself and  
19 other current or former employees pursuant to the procedures specified in  
20 Section 2699.3.

21 72. Plaintiff and Class Members are “aggrieved employees” as that term is defined  
22 in the California Labor Code Private Attorney General Act of 2004, because they are current or  
23 former employees of the alleged violator and against whom one or more of the alleged  
24 violations was committed.

25 73. As outlined above, Plaintiff has met all the notice requirements set forth in  
26 Labor Code § 2699.3 necessary to commence a civil action.

27 74. Plaintiff brings this action on behalf of herself and all aggrieved employees who  
28 were subject to Defendant’s failure to pay Plaintiff and aggrieved employees for all hours they  
worked at the applicable minimum, regular, and overtime wage rate; its failure to comply with  
California’s meal and rest break laws; its failure to provide accurate wage statements; and its

1 failure to pay Plaintiff and aggrieved employees who are former employees all their wages due  
2 and owing upon termination.

3 75. Plaintiff, on behalf of herself and in a representative capacity on behalf of all  
4 members of the PAGA aggrieved employee Class, demand the maximum civil penalty  
5 specified in Labor Code § 2699 in the amount of one hundred dollars (\$100) for Plaintiff and  
6 each aggrieved member of the Class per period for the initial violation and two hundred dollars  
7 (\$200) per pay period for each subsequent violation for violations of Labor Code §§ 201-204,  
8 226, 226.7, 510, 1194, 1197, and 1198.

9 76. These penalties are recoverable in addition to any other civil penalty separately  
10 recoverable by law.

11 **NINTH CAUSE OF ACTION**

12 **Unfair Business Practices**

13 (On Behalf of Plaintiff and the Class Against Defendant)

14 77. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
15 this Complaint as though fully set forth herein.

16 78. By the conduct described throughout this Complaint, Defendant has violated the  
17 provisions of the California Labor Code as specified and have engaged in unlawful, deceptive,  
18 and unfair business practices prohibited by California Business & Professions Code § 17200, *et*  
19 *seq.* Defendant's use of such practices resulted in greatly decreased labor costs and constitutes  
20 an unfair business practice, unfair competition, and provides an unfair advantage over  
21 Defendant's competitors.

22 79. The unlawful and unfair business practices complained of herein are ongoing  
23 and present a threat and likelihood of continuing against Defendant's current employees as well  
24 as other members of the general public. Plaintiff and Class Members are therefore entitled to  
25 injunctive and other equitable relief against such unlawful practices in order to prevent future  
26 damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiff and the Class Members  
27 request a preliminary and permanent injunction prohibiting Defendant from the unfair practices  
28 complained of herein.

1 80. Defendant generated income as a direct result of the above-mentioned unlawful  
2 and unfair business practices. Plaintiff and the Class Members are therefore entitled to  
3 restitution of any and all monies withheld, acquired, and/or converted by Defendant by means  
4 of the unfair and unlawful practices complained of herein.

5 81. As a result, Plaintiff and Class Members seek restitution of their unpaid wages,  
6 unpaid overtime, meal and rest break pay, itemized wage statement penalties, and waiting time  
7 penalties, in addition to interest, attorneys' fees, and costs, as necessary and according to proof.  
8 Plaintiff seeks the appointment of a receiver, as necessary, to establish the total monetary relief  
9 sought from Defendant.

10 **JURY DEMAND**

11 Plaintiff KAREN MARTINEZ hereby respectfully demands a trial by jury on all issues  
12 so triable.

13 **PRAYER FOR RELIEF**

14 Wherefore Plaintiff, individually and on behalf of all Class Members and all others  
15 similarly situated, prays for relief as follows relating to her class and representative action  
16 allegations:

- 17 1. For an order conditionally certifying the action under the FLSA and providing  
18 notice to all FLSA Class members so they may participate in the lawsuit;
  - 19 2. For an order certifying this action as a class action on behalf of the proposed  
20 Classes;
  - 21 3. For an order appointing Plaintiff as the Representative of the Class and her  
22 counsel as Class Counsel;
  - 23 4. For damages according to proof for regular rate or minimum rate pay, whichever  
24 is higher, for all hours worked under both federal and California law;
  - 25 5. For damages according to proof for overtime compensation for all overtime  
26 hours worked under both federal and California law;
  - 27 6. For liquidated damages;
- 28

- 1           7.     For one hours pay at the regular rate or minimum rate pay, whichever is higher,
- 2                     for every missed and/or inadequate meal period;
- 3           8.     For waiting time penalties;
- 4           9.     For civil penalties;
- 5           10.    For PAGA penalties;
- 6           11.    For interest as provided by law at the maximum legal rate;
- 7           12.    For reasonable attorneys' fees authorized by statute;
- 8           13.    For costs of suit incurred herein;
- 9           14.    For pre-judgment and post-judgment interest, as provided by law, and
- 10          15.    For such other and further relief as the Court may deem just and proper.

11  
12           DATED: October 6, 2017

THIERMAN BUCK LLP

13  
14                     s/Joshua D. Buck

Mark R. Thierman

Joshua D. Buck

Leah L. Jones

15  
16  
17                     Attorneys for Plaintiff

**Index of Exhibits**

1. PAGA Letter
2. PAGA Confirmation
3. Consent to Join

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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**EXHIBIT 1**

*PAGA Letter*

**EXHIBIT 1**



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October 13, 2016

**VIA E-FILING**

California Labor and Workforce Development Agency  
801 K Street, Suite 2101  
Sacramento, California 95814

Subject: PAGA Claim Notice: *Karen Martinez v. John Muir Health*

Dear Representative:

This office represents Karen Martinez, on behalf of herself and all other similarly situated and aggrieved employees (“Plaintiff”), in connection with her claims under the California Labor Code against her employer John Muir Health (“John Muir”). Plaintiff intends to seek penalties for certain violations of the California Labor Code (hereinafter referred to as “Labor Code”), detailed below, which are recoverable under Labor Code §§ 2699, *et seq.* (“the Private Attorneys General Act”). Plaintiff is seeking penalties on behalf of the State of California and aggrieved employees. This letter is sent in compliance with the reporting requirements of Labor Code § 2699.3.

A draft complaint is attached to this letter as Exhibit A which sets forth all of the factual and legal theories that support Plaintiff’s claim for unpaid wages and penalties. Therefore, on behalf of all aggrieved employees, Plaintiff seeks all applicable penalties related to these violations of the California Labor Code pursuant to the Private Attorneys General Act.

The employer may be contacted directly at the following address:

John Muir Health  
1400 Treat Boulevard  
Walnut Creek, CA 94597

This is also the address of John Muir’s Registered Agent, Calvin Knight (a copy of this communication is also being sent to its registered agent).



Page 2 of 2

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Thank you for your attention to this matter. If you have any questions, or if we may be of any further assistance, please contact me at (775) 284-1500.

Very truly yours,



Mark R. Thierman

cc: Karen Martinez  
John Muir Health (Via Certified Mail)  
file

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12 ATTORNEYS FOR PLAINTIFF

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 14 **COUNTY OF CONTRA COSTA**

15 KAREN MARTINEZ, on behalf of herself  
 16 and all other similarly situated individuals,

17 Plaintiff,

18 vs.

19 JOHN MUIR HEALTH, and DOES 1  
 20 through 50, inclusive,

21 Defendants

Case No.

22 **CLASS AND REPRESENTATIVE**  
 23 **ACTION COMPLAINT**

- 24 1) Failure to Pay Minimum Wages;
- 25 2) Failure to Pay Overtime Wages;
- 26 3) Failure to Provide Accurate Wage Statements;
- 27 4) Failure to Timely Pay All Wages Due and Owing;
- 28 5) Violating Private Attorney Generals Act; and
- 6) Unfair Business Practices.

**JURY TRIAL DEMANDED**

Plaintiff KAREN MARTINEZ (“Plaintiff”), on behalf of herself, the general public, and all other similarly situated and typical persons, alleges the following:

All allegations in this Complaint are based upon information and belief except for those allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in this

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1 Complaint either has evidentiary support or is likely to have evidentiary support after a  
2 reasonable opportunity for further investigation and discovery.

3 **JURISDICTION AND VENUE**

4 1. This Court has original jurisdiction over the state law claims alleged herein  
5 pursuant to the California Constitution.

6 2. Venue is proper in this Court because one or more of the Defendants named  
7 herein maintains a principal place of business or otherwise is found in this judicial district and  
8 many of the acts complained of herein occurred in Contra Costa County.

9 **PARTIES**

10 3. Plaintiff KAREN MARTINEZ is natural person was employed by Defendant  
11 within the State of California for 19 years from May 1, 1997 to February 19, 2016.

12 4. Defendant JOHN MUIR HEALTH (“John Muir” or “Defendant”) is a California  
13 corporation with its principle place of business at 1400 Treat Boulevard, Walnut Creek  
14 California, 94597.

15 5. The identity of DOES 1-50 is unknown at this time, and this Complaint will be  
16 amended at such time when the identities are known to Plaintiff. Plaintiff is informed and  
17 believes that each of the Defendants sued herein as DOE is responsible in some manner for the  
18 acts, omissions, or representations alleged herein and any reference to “Defendant,”  
19 “Defendants,” or “John Muir” herein shall mean “Defendants and each of them.”

20 **FACTUAL ALLEGATIONS**

21 6. John Muir is a not-for-profit corporation that operates primarily in Contra Costa  
22 County. Plaintiff was employed by John Muir as a Case Manager. Plaintiff was an hourly paid  
23 non-exempt employee and earned \$78.00 per hour. Her regular schedule was 8:00 a.m. to 4:30  
24 p.m., with a 30-minute unpaid meal period. In addition to her hourly rate of pay, Plaintiff, and  
25 all other similarly situated individuals, also received the following non-discretionary bonuses  
26 (“Bonuses”) from Defendant:

- 27 a. **Success Sharing Bonus:** This is a yearly bonus given to all non-exempt  
28 employees based on the Defendant’s financial success for the year;

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1           b.       **Certification Bonus:** This is a yearly bonus given to all non-exempt  
2 employees whose job position requires a certification credential; and

3           c.       **Top Range Bonus:** This is a yearly bonus given to all non-exempt  
4 employees who are at the top of the pay scale and no longer receive yearly base rate  
5 wage increases.

6 Upon information and belief, none of these Bonuses were included in the regular rate of pay for  
7 overtime payment calculations for Plaintiff or any other member of the putative class members  
8 identified below. Plaintiff regularly worked overtime over 8-hours in a workday and over 40  
9 hours in a workweek.

10           7.       Beginning on or about the fall of 2013, Defendant instituted cost cutting  
11 measures that decreased Defendant's labor force but substantially increased the employee to  
12 patient ratio. As a result of this policy change, Plaintiff and all other similarly situated  
13 employees, were required to perform numerous work duties "off the clock" so as to meet the  
14 new patient metrics. Plaintiff and all other similarly situated individuals would clock out at the  
15 end of the workday and would continue to input patient notes and process insurance claims.  
16 Defendant and Defendant's agents were aware that Plaintiff and all other similarly situated  
17 employees were working without compensation because employees were physically present at  
18 Defendant's facility and the electronic system for charting and insurance processing was time  
19 sensitive, meaning that an electronic time stamp was generated for each and every entry.

20           8.       Despite knowing that Plaintiff and other similarly situated individuals were  
21 performing work off-the-clock and without compensation, Defendant failed to prevent the  
22 performance of such work. In fact, Defendant's new cost cutting policy and increased  
23 employee to patient ratio resulted in the off-the-clock work being performed.

24                           **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

25           9.       Plaintiff realleges and incorporates by this reference all the paragraphs above in  
26 this Complaint as though fully set forth herein.

27           10.       Plaintiff brings this action on behalf of herself and the following Class: **All**  
28 **nonexempt hourly paid employees employed by Defendant at any time during the period**

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1 of four years prior to the filing of this complaint to the date of judgment after trial (also  
2 referred to herein as “Class Members”).

3 11. The Class may be further subdivided into the following subclasses of similarly-  
4 situated and typical individuals based upon the divergent statute of limitations period for  
5 various claims asserted herein (collectively “the Subclasses” or “Subclass Members”):

6 A. **Itemized Wage Statement Subclass:** All Class Members who were employed  
7 at any time during the period of one year prior to the filing of this complaint to  
8 the date of judgment after trial.

9 B. **Waiting Time Penalties Subclass:** All Class Members who were employed at  
10 any time during the period of three years prior to the filing of this complaint to  
11 the date of judgment after trial.

12 C. **PAGA Subclass:** All Class Members who were employed at any time during  
13 the period of one year prior to the filing of this complaint to the date of judgment  
14 after trial.

15 12. Class treatment is appropriate in this case for the following reasons:

16 A. The Class is Sufficiently Numerous: Upon information and belief,  
17 Defendant employs, and has employed, in excess of 1,000 Class Members within the  
18 applicable statute of limitations. Because Defendant is legally obligated to keep  
19 accurate payroll records, Plaintiff alleges that Defendant’s records will establish the  
20 members of the Class as well as their numerosity.

21 B. Common Questions of Law and Fact Exist: Common questions of law  
22 and fact exist and predominate as to Plaintiff and Class Members, including, without  
23 limitation:

- 24 1) Whether Defendant failed to compensate Plaintiff and all members of the  
25 Class at the correct overtime rate by failing to include the Bonuses into  
26 the regular rate;
- 27 2) Whether Defendant failed to compensate Plaintiff and members of the  
28 Class for all the hours that they worked;

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1                   3)     Whether Defendant’s policy of not including the hours worked in a pay  
2                   period on the pay stub violates the itemized wage statement provisions of  
3                   the California Labor Code and the Orders of the California Industrial  
4                   Wage Commission; and

5                   4)     Whether Defendant willfully failed to pay Class Members all wages due  
6                   and owing at the time of termination.

7                   C.     Plaintiff’s Claims are Typical to Those of Fellow Class Members:

8     Plaintiff was not paid overtime on the Bonuses that were paid to members of the Class  
9     and performed work off the clock without compensation. Plaintiff’s claims are typical  
10    to those of the class that she seeks to represent. In addition, Defendant did not give  
11    Plaintiff and Class Members accurate wage statements to reflect their hours worked, rate  
12    of pay, and overtime compensation; and Defendant has not timely remit all wages due  
13    and owing to Plaintiff and Class Members who are former employees upon their  
14    termination.

15               D.     Plaintiff is an Adequate Representative of the Class: Plaintiff will fairly  
16    and adequately represent the interests of Class Members because Plaintiff is a member  
17    of the Class, she has common issues of law and fact with all members of the Class, and  
18    her claims are typical to other Class Members.

19               E.     A Class Action is Superior/Common Claims Predominate: A class action  
20    is superior to other available means for the fair and efficient adjudication of this  
21    controversy, since individual joinder of all members of the Class is impractical. Class  
22    action treatment will permit a large number of similarly situated persons to prosecute  
23    their common claims in a single forum simultaneously, efficiently, and without  
24    unnecessary duplication of effort and expense. Furthermore, the expenses and burden of  
25    individualized litigation would make it difficult or impossible for individual members of  
26    the Class to redress the wrongs done to them, while an important public interest will be  
27    served by addressing the matter as a class action. Individualized litigation would also  
28    present the potential for inconsistent or contradictory judgments.

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**FIRST CAUSE OF ACTION**

**Failure to Pay Minimum Wages for All Hours Worked**

(On Behalf of Plaintiff and the Class Against Defendant)

13. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

14. California Labor Code (hereinafter referred to as “Labor Code”) § 1194 provides that “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

15. Labor Code § 1197 empowers the Industrial Welfare Commission to fix the minimum wage and states that “the payment of a less wage than the minimum so fixed is unlawful.” Section 4 of applicable Wage Order No. 9 requires Defendants to pay its employees minimum wages for all hours worked.

16. Because Defendant failed to compensate Plaintiff and Class Members for their hours worked off the clock as set forth above, Defendant failed to pay Plaintiff and Class Members the required minimum wage rate for each hour worked.

17. Labor Code § 1194.2(a) provides that, in an action to recover wages because of the payment of a wage less than the minimum wage fixed by the IWC Wage Orders, an employee is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

18. Plaintiff and Class Members should have received their regular rate of pay, or the minimum wage, whichever is higher, in a sum according to proof for the hours worked, but not compensated, during the Class Period. Defendant therefore owes Plaintiff and Class Members regular rate wages or minimum wages, whichever are higher, as well as liquidated damages in an equal amount to the wages owed, and has failed and refused, and continues to fail and refuse, to pay Plaintiff and Class Members the amounts owed.

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1           19. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
2 herein, the Plaintiff and Class Members have sustained damages and been deprived of minimum  
3 wages and regular wages that are owed in amounts to be proven at trial, and are entitled to  
4 recovery of such amounts, plus interest, liquidated damages, and attorneys' fees and costs  
5 pursuant to Labor Code §§ 218.5, 1194, and 1194.2. Because Defendant's conduct described  
6 immediately above is an act of unfair competition and a business practice in violation of  
7 California Business & Professions Code § 17200, Plaintiff and Class Members are entitled to  
8 recover the amounts previously specified for four years prior to the filing of this complaint to  
9 the date of judgment after trial.

10           20. Defendant is also subject to civil penalties and restitution of wages payable to  
11 Plaintiff and all Class Members pursuant to Labor Code § 1179.1 as follows:

12           (1) For any initial violation that is intentionally committed, one hundred dollars  
13 (\$100) for each underpaid employee for each pay period for which the employee is  
14 underpaid. This amount shall be in addition to an amount sufficient to recover  
15 underpaid wages.

16           (2) For each subsequent violation for the same specific offense, two hundred fifty  
17 dollars (\$250) for each underpaid employee for each pay period for which the  
18 employee is underpaid regardless of whether the initial violation is intentionally  
19 committed. This amount shall be in addition to an amount sufficient to recover  
20 underpaid wages.

21           (3) Wages recovered pursuant to this section shall be paid to the affected employee.

22 These penalties are in addition to any other penalty provided by law and are recoverable by  
23 private individuals on behalf of the state of California under the Private Attorney General  
24 Act, Labor Code § 2699, et. seq.

25           21. Defendant is also subject to civil penalties and restitution of wages payable to  
26 Plaintiff and all Class Members pursuant to Labor Code § 558 for violating the applicable  
27 Wage Order as follows:

28           (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
pay period for which the employee was underpaid in addition to an amount sufficient  
to recover underpaid wages.

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1 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
2 employee for each pay period for which the employee was underpaid in addition to an  
3 amount sufficient to recover underpaid wages.

4 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

5 These penalties are in addition to any other penalty provided by law and are recoverable by  
6 private individuals on behalf of the state of California under the Private Attorney General  
7 Act, Labor Code § 2699, et. seq.

8 **SECOND CAUSE OF ACTION**

9 **Failure to Pay Overtime Wages for All Hours Worked**

10 (On Behalf of Plaintiff and the Class Against Defendant)

11 22. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
12 this Complaint as though fully set forth herein.

13 23. Labor Code §§ 510 and 1198, and Section 3 of applicable Wage Order No. 9,  
14 mandate that California employers pay overtime compensation at one and one half times the  
15 regular rate of pay to all non-exempt employees for all hours worked over eight (8) per day or  
16 over forty (40) per week and “any work in excess of 12 hours in one day shall be compensated  
17 at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in  
18 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no  
19 less than twice the regular rate of pay of an employee.” Section 3(A)(1) of the applicable Wage  
20 Order states in relevant part: “Employment beyond eight (8) hours in any workday or more than  
21 six (6) days in any workweek is permissible provided the employee is compensated for such  
22 overtime at not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay  
23 for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday,  
24 and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a  
25 workweek; and (b) Double the employee’s regular rate of pay for all hours worked in excess of  
26 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh  
27 (7th) consecutive day of work in a workweek.”  
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1           24. Labor Code § 1198 states that “The maximum hours of work and the standard  
2 conditions of labor fixed by the commission shall be the maximum hours of work and the  
3 standard conditions of labor for employees. The employment of any employee for longer hours  
4 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

5           25. Because Defendant failed to compensate Plaintiff and Class Members for their  
6 hours worked off the clock as set forth above, Defendant failed to pay Plaintiff and Class  
7 Members overtime compensation when due.

8           26. Also, because Defendant failed to include the Bonuses into the regular rate of  
9 pay in calculating the overtime rate for Plaintiff and Class Members as set forth above,  
10 Defendants failed to pay Plaintiff and Class Members their correct overtime rate.

11           27. Wherefore, Plaintiff demands for herself and for Class Members that Defendant  
12 pay Plaintiff and Class Members overtime pay at the applicable legal rate for all overtime hours  
13 worked together with attorneys’ fees, costs, and interest as provided by law. Because  
14 Defendant’s conduct described immediately above is an act of unfair competition and a business  
15 practice in violation of California Business & Professions Code § 17200, Plaintiff and Class  
16 Members are entitled to recover the amounts previously specified for four years prior to the  
17 filing of this complaint to the date of judgment after trial.

18           28. Defendant is also subject to civil penalties and restitution of wages payable to  
19 Plaintiff and all Class Members pursuant to Labor Code § 558 as follows:

20           (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
21 pay period for which the employee was underpaid in addition to an amount sufficient  
22 to recover underpaid wages.

23           (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
24 employee for each pay period for which the employee was underpaid in addition to an  
25 amount sufficient to recover underpaid wages.

26           (3) Wages recovered pursuant to this section shall be paid to the affected employee.

27 These penalties are in addition to any other penalty provided by law and are recoverable by  
28 private individuals on behalf of the state of California under the Private Attorney General

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1 Act, Labor Code § 2699, et. seq.

2 **THIRD CAUSE OF ACTION**

3 **Failure to Provide Accurate Wage Statements**

4 (On Behalf of Plaintiff and the Wage Statement Subclass Against Defendant)

5 29. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
6 this Complaint as though fully set forth herein.

7 30. Defendant knowingly and intentionally failed to provide timely, accurate,  
8 itemized wage statements showing, inter alia, hours worked, to Plaintiff and Class Members in  
9 accordance with Labor Code § 226(a) and applicable Wage Order No. 9. Such failure caused  
10 injury to Plaintiff and Class Members by, among other things, impeding them from knowing  
11 the amount of wages to which they are and were legally entitled.

12 31. Plaintiff’s good faith estimate of the number of pay periods in which Defendant  
13 failed to provide accurate itemized wage statements to Plaintiff and Class Members is each and  
14 every pay period during the Class Period.

15 32. Plaintiff and the Class Members are entitled to and seek injunctive relief  
16 requiring Defendant to comply with Labor Code §§ 226(a) and further seek the amount  
17 provided under Labor Code § 226(e), including the greater of all actual damages or fifty dollars  
18 (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100)  
19 per employee for each violation in a subsequent pay period.

20 33. Defendant is also subject to civil penalties for Labor Code §§ 226(a) violations  
21 “in the amount of two hundred and fifty dollars (\$250) per employee per violation in an initial  
22 citation and one thousand (\$1,000) per employee for each violation in a subsequent citation . . .  
23 .” as provided by Labor Code §§ 226.3. These penalties are in addition to any other penalty  
24 provided by law and are recoverable by private individuals on behalf of the state of California  
25 under the Private Attorney General Act, Labor Code § 2699, et. seq.

26 34. Because Defendant’s conduct described immediately above is an act of unfair  
27 competition and a business practice in violation of California Business & Professions Code  
28 Section 17200, Plaintiff further demands the Defendant be enjoined from continuing to provide

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1 inaccurate pay statements that fail to include the amount of hours worked by each employee,  
2 the hourly rate of pay, and the amount of all overtime hours worked at the corresponding  
3 hourly rate.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Timely Pay All Wages Due and Owing**

6 (On Behalf of Plaintiff and the Waiting Time Penalties Subclass Against Defendant)

7 35. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
8 this Complaint as though fully set forth herein.

9 36. Labor Code §§ 201 and 202 require an employer to pay its employees all wages  
10 due within the time specified by law. Labor Code § 203 provides that if an employer willfully  
11 fails to timely pay such wages, the employer must continue to pay the subject employees'  
12 wages until the back wages are paid in full or an action is commenced, up to a maximum of  
13 thirty (30) days of wages.

14 37. Class Members who ceased employment with Defendant are entitled to unpaid  
15 compensation for unpaid minimum, regular, and overtime wages, as alleged above, but to date  
16 have not received such compensation. Defendant's failure to pay such wages and  
17 compensation, as alleged above, was knowing and "willful" within the meaning of Labor Code  
18 § 203.

19 38. As a consequence of Defendant's willful conduct in not paying compensation  
20 for all hours worked, Class Members whose employment ended within the last three years from  
21 the filing of this complaint are entitled to up to thirty days' wages under Labor Code § 203,  
22 together with interest thereon and attorneys' fees and costs.

23 **SIXTH CAUSE OF ACTION**

24 **Violating California Private Attorney General Act**

25 (On Behalf of Plaintiff and the PAGA Subclass Against Defendant)

26 39. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
27 this Complaint as though fully set forth herein.

28 40. Labor Code § 2699(a) states:

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1           Notwithstanding any other provision of law, any provision of this  
2 code that provides for a civil penalty to be assessed and collected by the  
3 Labor and Workforce Development Agency or any of its departments,  
4 divisions, commissions, boards, agencies, or employees, for a violation of  
5 this code, may, as an alternative, be recovered through a civil action  
6 brought by an aggrieved employee on behalf of himself or herself and  
7 other current or former employees pursuant to the procedures specified in  
8 Section 2699.3.

9           41. Plaintiff and Class Members are “aggrieved employees” as that term is defined  
10 in the California Labor Code Private Attorney General Act of 2004, because they are current or  
11 former employees of the alleged violator and against whom one or more of the alleged  
12 violations was committed.

13           42. Plaintiff has met or will meet all the notice requirements set forth in Labor Code  
14 § 2699.3 necessary to commence a civil action.

15           43. Plaintiff brings this action on behalf of herself and all aggrieved employees who  
16 were subject to Defendant’s failure to pay Plaintiff and aggrieved employees for all hours they  
17 worked at the applicable minimum, regular, and overtime wage rate; its failure to comply with  
18 California’s meal and rest break laws; its failure to provide accurate wage statements; and its  
19 failure to pay Plaintiff and aggrieved employees who are former employees all their wages due  
20 and owing upon termination.

21           44. Plaintiff, on behalf of herself and in a representative capacity on behalf of all  
22 members of the PAGA aggrieved employee Class, demand the maximum civil penalty  
23 specified in Labor Code § 2699 in the amount of one hundred dollars (\$100) for Plaintiff and  
24 each aggrieved member of the Class per period for the initial violation and two hundred dollars  
25 (\$200) per pay period for each subsequent violation for violations of Labor Code §§ 201-204,  
26 226, 226.7, 510, 1194, 1197, and 1198.

27           45. These penalties are recoverable in addition to any other civil penalty separately  
28 recoverable by law.

### **SEVENTH CAUSE OF ACTION**

#### **Unfair Business Practices**

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(On Behalf of Plaintiff and the Class Against Defendant)

46. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

47. By the conduct described throughout this Complaint, Defendant has violated the provisions of the California Labor Code as specified and have engaged in unlawful, deceptive, and unfair business practices prohibited by California Business & Professions Code § 17200, *et seq.* Defendant's use of such practices resulted in greatly decreased labor costs and constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendant's competitors.

48. The unlawful and unfair business practices complained of herein are ongoing and present a threat and likelihood of continuing against Defendant's current employees as well as other members of the general public. Plaintiff and Class Members are therefore entitled to injunctive and other equitable relief against such unlawful practices in order to prevent future damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiff and the Class Members request a preliminary and permanent injunction prohibiting Defendant from the unfair practices complained of herein.

49. Defendant generated income as a direct result of the above-mentioned unlawful and unfair business practices. Plaintiff and the Class Members are therefore entitled to restitution of any and all monies withheld, acquired, and/or converted by Defendant by means of the unfair and unlawful practices complained of herein.

50. As a result, Plaintiff and Class Members seek restitution of their unpaid wages, unpaid overtime, meal and rest break pay, itemized wage statement penalties, and waiting time penalties, in addition to interest, attorneys' fees, and costs, as necessary and according to proof. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendant.

**JURY DEMAND**

Plaintiff KAREN MARTINEZ hereby respectfully demands a trial by jury on all issues so triable.

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- 1           13.    For pre-judgment and post-judgment interest, as provided by law, and
- 2           14.    For such other and further relief as the Court may deem just and proper.

3  
4           DATED: October 13, 2016

THIERMAN BUCK LLP

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7           \_\_\_\_\_  
Mark R. Thierman  
Joshua D. Buck  
Leah L. Jones

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9           Attorneys for Plaintiff

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# **EXHIBIT 2**

## ***PAGA Confirmation***

**EXHIBIT 2**

**Tamara**

---

**From:** noreply@salesforce.com on behalf of DLSE DO NOT REPLY <dlsedonotreply@dir.ca.gov>  
**Sent:** Thursday, October 13, 2016 3:46 PM  
**To:** info  
**Subject:** Thank you for submission of your PAGA Case.

10/13/2016

LWDA Case No. LWDA-CM-162015-16

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

# **EXHIBIT 3**

## ***Consent to Join***

# **EXHIBIT 3**

**THIERMAN BUCK LLP**  
MARK R. THIERMAN, SB# 72913  
JOSHUA D. BUCK, SB# 258325  
LEAH L. JONES, SB# 276448  
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Fax: 775.703.5027  
info@thiermanbuck.com

ATTORNEYS FOR PLAINTIFF

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

KAREN MARTINEZ, on behalf of herself  
and all other similarly situated individuals,

Plaintiff,

vs.

JOHN MUIR HEALTH, and DOES 1  
through 50, inclusive,

Defendants.

Case No.

**CONSENT TO JOIN**

CONSENT TO JOIN

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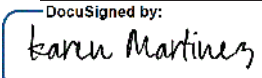
1 Pursuant to the Fair Labor Standards Act, ("FLSA") 29 U.S.C.S. § 216(b), the  
2 undersigned hereby gives my consent in writing to become a party plaintiff against my  
3 Employer, Former Employer, and/or any and all of its affiliated entities. I authorize the filing  
4 of a copy of this consent form in Court. I further consent to join this and/or any subsequent or  
5 amended suit against the same or related defendants for wage and hour violations.

6 By signing this form, I am also agreeing to be represented by attorneys, Thierman Buck,  
7 LLP, 7287 Lakeside Drive, Reno, NV 89511, and any other attorneys with whom they may  
8 associate, and authorize them to act on my behalf in all matters relating to my wage claims.

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Email: info@thiermanbuck.com www.thiermanbuck.com

Print Name: Karen Martinez

Signature  \_\_\_\_\_  
DocuSigned by:

0707BCF5868B4E7...

Date signed: 10/6/2017

Employer: John Muir Health

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KAREN MARTINEZ, on behalf of herself and all other similarly situated individuals,

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mark R. Thierman, Joshua D. Buck, Leah L. Jones
Thierman Buck, LLP
7287 Lakeside Dr., Reno, NV 89511; 775-284-1500

DEFENDANTS

JOHN MUIR HEALTH, and DOES 1 through 50, inclusive

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201, et. seq; 29 U.S.C. § 2017

Brief description of cause:
Plaintiffs are seeking to recover unpaid wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/06/2017

SIGNATURE OF ATTORNEY OF RECORD

s/Joshua D. Buck

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [John Muir Health Accused of Labor Law Violations](#)

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