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10 of other members of the general public similarly situated

11 **UNITED STATES DISTRICT COURT**

12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 EVELYN DESSAMERO-SISON,
14 Individually and on behalf of other
15 members of the general public
16 similarly situated

17 Plaintiff,

18 v.

19 PALOMAR HEALTH, a business
20 entity, form unknown; PALOMAR
21 MEDICAL CENTER ESCONDIDO,
22 a business entity, form unknown, and
23 DOES 1-10, inclusive

24 Defendants

CASE NO. '21CV1206 DMS LL

[Proposed Class Action]

COMPLAINT FOR:

1. **VIOLATION OF FAIR LABOR STANDARDS ACT;**
2. **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.;**
3. **DISCRIMINATION PURSUANT TO CAL. GOV'T. Code § 12940(a)]**

Demand for Jury Trial

1 COMES NOW Plaintiff EVELYN DESSAMERO-SISON, (“Plaintiff” or
2 “SISON”), individually and on behalf of all other members of the general public
3 similarly situated, and alleges for her Complaint as follows:

4 **PARTIES, JURISDICTION, AND VENUE**

- 5 1. At all relevant times herein, SISON was and is an individual working in the
6 County of San Diego, State of California.
- 7 2. Plaintiff is informed and believes and thereon alleges that at all relevant times
8 mentioned herein, Defendant PALOMAR HEALTH was and is a business entity,
9 form unknown, doing business throughout the state, including the County of San
10 Diego, state of California. Defendant PALOMAR MEDICAL CENTER
11 ESCONDIDO was and is a business entity, form unknown, doing business
12 throughout the state, including the County of San Diego, state of California.
13 (Collectively, PALOMAR HEALTH and PALOMAR MEDICAL CENTER
14 ESCONDIDO and are referred to collectively as Defendants, or “PALOMAR”).
- 15 3. Venue is proper because certain acts constituting the below violations were
16 committed in San Diego County.
- 17 4. Plaintiff is presently unaware of the true names, capacities, and liability of
18 defendants named herein as DOES 1 through 10, inclusive. Accordingly,
19 Plaintiff will seek leave of court to amend this complaint to allege their true
20 names and capacities after the same have been ascertained.
- 21 5. Plaintiff is informed and believes, and thereon alleges, that each of the
22 fictitiously named defendants is responsible in some manner for the wrongs and
23 damages as herein alleged, and in so acting was functioning as the agent,
24 servant, partner, and employee of the co-defendants, and in doing the actions
25 mentioned below, was acting within the course and scope of his or her authority
26 as such agent, servant, partner, and employee with the permission and consent
27 of the co-defendants. Plaintiff’s injuries as herein alleged were proximately
28 caused by said defendants. Wherever it is alleged herein that any act or omission

1 was done or committed by any specially named defendant or defendants,
2 Plaintiff intends thereby to allege and does allege that the same act or omission
3 was also done and committed by each and every defendant named as a DOE,
4 both separately and in concert or conspiracy with the named defendant or
5 defendants.

- 6 6. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each
7 of them, including DOES 1 through 10, are and at all times herein mentioned
8 were either individuals, sole proprietorships, partnerships, registered
9 professionals, corporations, alter egos or other legal entities which were licensed
10 to do and/or were doing business in (among others) the County of San Diego, in
11 the State of California, at all times relevant to the subject matter of this action.
- 12 7. The Fair Labor Standards Act of 1938 (“FLSA”) authorizes Court actions by
13 private parties to recover damages for violations of the FLSA’s wage and hour
14 provisions. Jurisdiction over Plaintiff’s FLSA claims is based upon 29 U.S.C.
15 section 216(b) and 28 U.S.C. section 1331.
- 16 8. Under 28 U.S.C. section 1367, this Court has supplemental jurisdiction over
17 Plaintiff’s state law claims because the state claims are so related to the FLSA
18 claims that they form part of the same case of controversy. Additionally,
19 jurisdiction over Plaintiff’s state law claims is based upon the Class Action
20 Fairness Act, 28 U.S.C. section 1332(d)(2)(A), because the amount in
21 controversy exceeds five-million dollars (\$5,000,000.00), exclusive of interest
22 and costs, and because the parties are diverse.

23 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

- 24 9. Plaintiff SISON brings Count I, the FLSA claim, as a statewide “opt-in”
25 collective action pursuant to 29 U.S.C. section 216(b), on behalf of herself and
26 the following persons:

27 All current and former nonexempt employees of PALOMAR who
28 have worked for PALOMAR in the state of California at any time

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during the last three years.

10. SISON brings Count II (violation of California Business & Professions Code section 17200 et seq.) as an “opt-out” class action pursuant to Fed.R.Civ.P. 23, on behalf of herself and as the Class Representative of the following persons:

All current and former nonexempt employees of PALOMAR who have worked for PALOMAR in the state of California within the last four years.

11. The FLSA claim is pursued on behalf of those who opt-in to this case, pursuant to 29 U.S.C. section 216(b).

12. The count two state law claims, if certified for class-wide treatment, are pursued on behalf of all similarly situated persons who do not opt-out of the Class.

13. Plaintiff, individually and on behalf of all other similarly situated employees, seeks relief on a collective basis challenging, among other FLSA violations, PALOMAR’S uniform practice of: (1) failing to pay employees for all overtime compensation due, as a result of PALOMAR’ failure to properly calculate the “Regular Rate of Pay” for purposes of calculating the Overtime rate of pay; (2) the Class was not compensated for hours they worked before and after they clocked in/out of Defendant’s time keeping, and during the times that they working while they were clocked out for a lunch break, but were still working, as evidenced by Defendant’s other computerized and/or electronic systems. The facts for these allegations are set forth below in Count I. The number and identity of other plaintiffs may be determined from PALOMAR’s records and potential class members may easily and quickly be notified of the pendency of this action.

14. Plaintiff’s count two state law claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements of a class action pursuant to Fed.R.Civ.P. 23.

15. The class on whose behalf the action is brought is so numerous that joinder of

1 all parties individually would be impracticable. Plaintiff brings this action on
2 behalf of approximately Three Thousand (3,000) non-exempt, current and former
3 employees of Defendant who work or worked facilities located in California, and
4 who share a common or general interest, and it would be impracticable for those
5 employees to bring the action individually. Any variations in job activities
6 between the individual class members are legally insignificant to the issues
7 presented by this action since the central facts remain, to wit, Plaintiff and all
8 other class members were improperly denied the benefits and protections of the
9 FLSA, by and through Defendants' standard and institutionalized practices, and
10 were therefore victims of the illegal and/or unfair acts and practices of
11 PALOMAR.

12 16. The approximately Three Thousand (3,000) member class is ascertainable via
13 their experience as current or former employees of Defendants, designated by
14 PALOMAR as "non-exempt" and thus entitled to Overtime Compensation, who
15 work or worked in facilities located in California.

16 17. This action involves questions of law and fact common to the Class that
17 predominate over any questions affecting only individual members in that
18 Plaintiff brings this action on behalf of a class of Defendant's current and former
19 nonexempt employees who work or worked in facilities located in California and
20 who were and/or are denied the benefits and protections of the FLSA. The
21 questions of law and fact common to the Class arising from PALOMAR's
22 actions include, without limitation, the following:

23 a. Whether PALOMAR deprived Class Members of proper and complete
24 compensation (including overtime compensation) in violation of, *inter*
25 *alia*, sections 207(a) and 207(e) of the FLSA, and 29 C.F.R. section
26 778.207 in that PALOMAR failed to properly calculate the Regular Rate
27 of Pay (for purposes of calculating the proper Overtime Rate of Pay) for
28 those employees who received a shift differential. Employers must include

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