

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9
10 SHYLAINE ROBERTS, on behalf of the
11 State of California, as a private attorney
12 general,

13 Plaintiff,

14 vs.

15 SOLANTIC CORPORATION, a
16 Corporation, and DOES 1 through 50,
17 inclusive,

18 Defendants.
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Case No. 20NWCV00603

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1.Civil Penalties Pursuant to Labor Code § 2699. *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 233, 246, 248.5, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B).

1 Plaintiff Shylaine Roberts (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Solantic Corporation (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit individuals to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Solantic Corporation (“DEFENDANT”) is a Corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in the
25 state of California.

26 5. DEFENDANT has extensive experience in urgent care management and
27 operations.
28

1 6. PLAINTIFF has been employed by DEFENDANT since November of 2016 and
2 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
3 basis, and entitled to the legally required meal and rest periods and payment of minimum and
4 overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by DEFENDANT in California and
9 who were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the
10 time period of August 23, 2019 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
12 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
13 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
14 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
15 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
16 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
17 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
18 the meaning of Labor Code § 2699, *et seq.*

19 9. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
21 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
22 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
23 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
24 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
25 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
26 responsible in some manner for one or more of the events and happenings that proximately
27 caused the injuries and damages hereinafter alleged.

28 10. The agents, servants and/or employees of the Defendants and each of them acting

1 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
2 agent, servant and/or employee of the Defendants, and personally participated in the conduct
3 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
4 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
5 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
6 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
7 agents, servants and/or employees.

8 9 THE CONDUCT

10 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
11 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
12 meaning the time during which an employee is subject to the control of an employer, including
13 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
14 and AGGRIEVED EMPLOYEES to work without paying them for all the time they are under
15 DEFENDANT's control. From time to time, DEFENDANT requires PLAINTIFF to work
16 while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
17 PLAINTIFF is from time to time interrupted by work assignments. As a result, PLAINTIFF
18 and other AGGRIEVED EMPLOYEES forfeit minimum wage and overtime compensation by
19 from time to time working without their time being accurately recorded and without
20 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform
21 policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
22 worked is evidenced by DEFENDANT's business records.

23 12. State and federal law provides that employees must be paid overtime at one-and-
24 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
25 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
26 employee's performance.

27 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
28 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF

1 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
2 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
3 hourly basis with incentive compensation when the employees met the various performance
4 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
5 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
6 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
7 of calculating overtime pay. Management and supervisors described the incentive program to
8 potential and new employees as part of the compensation package. As a matter of law, the
9 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
10 be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
11 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
12 DEFENDANT.

13 14. DEFENDANT further underpaid sick pay wages to PLAINTIFF and other
14 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay.
15 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES regularly earn
16 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
17 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
18 pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

19 15. DEFENDANT, as a matter of established company policy and procedure,
20 administered a uniform practice of rounding the actual time worked and recorded by Plaintiff
21 and the other AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that
22 during the course of their employment, Plaintiff and the other AGGRIEVED EMPLOYEES
23 were paid less than they would have been paid had they been paid for actual recorded time
24 rather than "rounded" time. Plaintiff, on information and belief, allege that DEFENDANT'S
25 rounding policy was neither fair nor neutral because Plaintiff the other AGGRIEVED
26 EMPLOYEES did not gain time through the rounding policy. In addition, Plaintiff and the
27 other AGGRIEVED EMPLOYEES were not paid for time donning and doffing their Personal
28 Protective Equipment ("PPE") gear because Plaintiff and the other AGGRIEVED

1 EMPLOYEES were not paid until they were wearing their company uniforms and PPE, at their
2 assigned station, at their assigned start time and their paid work time ended at their scheduled
3 shift end time, at which point Plaintiff and the other AGGRIEVED EMPLOYEES were
4 permitted to remove their uniforms and PPE and clock out. Plaintiff and the other
5 AGGRIEVED EMPLOYEES were prohibited from clocking in more than seven (7) minutes
6 before their scheduled shift. As a result, Plaintiff and the other AGGRIEVED EMPLOYEES
7 were not paid for their time donning and doffing as set forth above as their pay started and
8 stopped immediately at their scheduled start and stop time.

9 16. As a result of their rigorous work schedules, PLAINTIFF and other
10 AGGRIEVED EMPLOYEES are also from time to time unable to take off duty
11 meal breaks and are not fully relieved of duty for meal periods. PLAINTIFF and other
12 AGGRIEVED EMPLOYEES are from time to time required to perform work as ordered by
13 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
14 break. Further, DEFENDANT fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES
15 with a second off-duty meal period from time to time in which these employees are required by
16 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
18 and in accordance with DEFENDANT's corporate policy and practice.

19 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
20 are also required from time to time to work in excess of four (4) hours without being provided
21 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
22 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
23 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
25 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
26 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
27 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
28 AGGRIEVED EMPLOYEES are from time to time denied their proper rest periods by

1 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
2 Order requires employers to provide employees with off-duty rest periods, which the California
3 Supreme Court defined as time during which an employee is relieved from all work related
4 duties and free from employer control. In so doing, the Court held that the requirement under
5 California law that employers authorize and permit all employees to take rest period means that
6 employers must relieve employees of all duties and relinquish control over how employees
7 spend their time which includes control over the locations where employees may take their rest
8 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
9 five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and
10 other AGGRIEVED EMPLOYEES from unconstrained walks and requires these employees to
11 remain on DEFENDANT's premises under DEFENDANT's control during what should be their
12 paid, off duty rest periods.

13 18. DEFENDANT also fails to provide PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES with complete and accurate wage statements which failed to show, among other
15 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
16 employer shall furnish each of his or her employees with an accurate itemized wage statement
17 in writing showing, among other things, gross wages earned and all applicable hourly rates in
18 effect during the pay period and the corresponding amount of time worked at each hourly rate.
19 Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay
20 and number of hours worked, including for the "Retro Pay," and "Worked Meal" items of pay,
21 which are wage payments. In addition, whenever sick pay wages are underpaid to Plaintiff and
22 the other AGGRIEVED EMPLOYEES, Defendant failed to furnish wage statements that
23 accurately show and itemize applicable hourly rates for sick time taken. Aside, from the
24 violations listed above, DEFENDANT failed to issue to PLAINTIFF an itemized wage
25 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
26 DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
27 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

28 19. DEFENDANT intentionally and knowingly fails to reimburse and indemnify

1 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
2 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
3 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
4 2802, employers are required to indemnify employees for all expenses incurred in the course
5 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
6 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
7 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
8 directions of the employer, even though unlawful, unless the employee, at the time of obeying
9 the directions, believed them to be unlawful."

10 20. In the course of their employment PLAINTIFF and other AGGRIEVED
11 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
12 cellular phones as a result of and in furtherance of their job duties as employees for
13 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
14 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
15 PLAINTIFF and other AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
16 personal cellular phones to respond to managers while off the clock (which also results in
17 minimum wage and overtime violations) and DEFENDANT requires PLAINTIFF and other
18 AGGRIEVED EMPLOYEES to use their personal vehicles in furtherance of their job duties
19 for DEFENDANT. As a result, in the course of their employment with DEFENDANT,
20 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
21 which included, but were not limited to, costs related to the use of their personal cellular phones
22 and personal vehicles all on behalf of and for the benefit of DEFENDANT.

23 21. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
25 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
26 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal,
27 rest periods, work performed off-the clock and sick pay at their regular rate of pay. This
28 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment for

1 all time worked as required by California law which allows DEFENDANT to illegally profit
2 and gain an unfair advantage over competitors who complied with the law. To the extent
3 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
4 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

5 22. By reason of this uniform conduct applicable to PLAINTIFF and all
6 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure
7 which fails to accurately calculate and record minimum, overtime, and sick wages due to
8 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper recording of these
9 employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of
10 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT fails
11 to properly calculate and/or pay all required compensation for work performed by the
12 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
13 promulgated thereunder as herein alleged.

14 23. All of the conduct and violations alleged herein occurred during the PAGA
15 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
17 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
18 AJDAR 12157 (Certified for Publication 12/19/18).

19 **JURISDICTION AND VENUE**

20 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
21 Procedure, Section 410.10.

22 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
23 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
24 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
25 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
26 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
27 AGGRIEVED EMPLOYEES.
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1 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
2 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 30. On January 27, 2021, PLAINTIFF gave written notice by electronic mail to the
4 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
5 employer of the specific provisions of this code alleged to have been violated as required by
6 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
7 to the operative Complaint has expired. As a result, pursuant to Section 2699.3,
8 PLAINTIFF may now commence a representative civil action under PAGA pursuant to
9 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
10 EMPLOYEES as herein defined.

11 31. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
13 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
14 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
15 (d) failed to pay overtime wages, and (e) failed to reimburse employees for required
16 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
17 202, 203, 204 *et seq.*, 210, 226(a), 233, 246, 248.5, 226.7, 351, 510, 512, 558(a)(1)(2), 1194,
18 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
19 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
20 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
21 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
22 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES.

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25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

severally, as follows:

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: July 20 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: 

Norman B. Blumenthal
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

3 I, Christine T. LeVu, am a citizen of the United States and a resident of the State of
4 California. I am employed in the County of San Diego, State of California. I am over the age of 18
5 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California
6 92037. On July 20, 2021, I served the document(s) described as:

7
8 **1. PLAINTIFF'S SECOND AMENDED COMPLAINT**

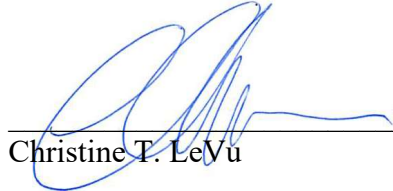
9
10 XX (BY ELECTRONIC SERVICE): I provided the documents referenced above electronically
11 via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

12 HARDY RAY MURPHY
13 hardy.murphy@ogletree.com
14 KATHLEEN J. CHOI
15 kathleen.choi@ogletree.com

16 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
17 400 South Hope Street, Suite 1200
18 Los Angeles, CA 90071

19 X (State): I declare under penalty of perjury under the laws of the State of California that the
20 above is true and correct.

21 Executed on July 20, 2021, at San Diego, California.

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23 
24 Christine T. LeVu
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