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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LASSEN**

14 JACQUELINE MARSHALL, on behalf of
15 the State of California, as a private
16 attorney general,

17 Plaintiff,

18 vs.

19 PHI AIR MEDICAL, LLC, a Limited
20 Liability Company; PHI HEALTH, LLC, a
21 Limited Liability Company; and Does 1
22 through 50, Inclusive;

23 Defendants.

Case No. 43485

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, 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)

ENDORSED FILED
Clerk of the Superior Court
County of Lassen

MAR 17 2021

By

S. Moss

DEPUTY CLERK

1 Plaintiff Jacqueline Marshall (“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 Defendants PHI AIR MEDICAL, LLC and PHI
8 HEALTH, LLC (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and
9 on behalf of all current and former aggrieved employees that worked for PHI AIR MEDICAL,
10 LLC and/or PHI HEALTH, LLC. PLAINTIFF does **not seek to recover anything other than**
11 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
12 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
13 and/or special damages for those violations, but simply the civil penalties permitted by
14 California Labor Code § 2699.

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

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

23 **THE PARTIES**

24 4. Defendant PHI Air Medical, LLC (“DEFENDANT”) is a limited liability
25 company that at all relevant times mentioned herein conducted and continues to conduct
26 substantial and regular business throughout California.

27 5. Defendant PHI health, LLC (“DEFENDANT”) is a limited liability company that
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1 at all relevant times mentioned herein conducted and continues to conduct substantial and
2 regular business throughout California.

3 6. As evidenced by PLAINTIFF's paychecks and company documents, Defendants
4 PHI Air Medical, LLC and PHI Health, LLC were joint employers of PLAINTIFF and are
5 referred to herein as ("DEFENDANT").

6 7. DEFENDANT is an air ambulance service provider, providing air medical
7 services and outreach education to local communities and leading healthcare systems.

8 8. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
9 employee entitled to overtime pay and meal and rest periods from February of 2017 to July
10 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as
11 a non-exempt employee paid in whole or in part on an hourly basis and received additional
12 compensation from DEFENDANT in the form of non-discretionary incentive wages, including,
13 but not limited to, performance incentive wages.

14 9. PLAINTIFF, and such persons that may be added from time to time who satisfy
15 the requirements and exhaust the administrative procedures under the Private Attorney General
16 Act, brings this Representative Action on behalf of the State of California with respect to herself
17 and all individuals who are or previously were employed by Defendants PHI Air Medical, LLC
18 and/or PHI Health, LLC in California and classified as non-exempt employees ("AGGRIEVED
19 EMPLOYEES") during the time period of July 9, 2019 until a date as determined by the Court
20 (the "PAGA PERIOD").

21 10. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
22 or formerly employed by Defendants PHI Air Medical, LLC and/or PHI Health, LLC during the
23 PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.*
24 seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201,
25 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
26 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
27 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
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1 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

11 12. The agents, servants and/or employees of the Defendants and each of them acting
12 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
13 agent, servant and/or employee of the Defendants, and personally participated in the conduct
14 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
15 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
16 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
18 agents, servants and/or employees.

19 20 **THE CONDUCT**

21 13. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
22 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES minimum
23 and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately calculate
24 wages for time worked by PLAINTIFF and other AGGRIEVED EMPLOYEES in order to
25 avoid paying these employees the correct minimum wage and overtime compensation. As a
26 result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for
27 working time without compensation at the correct minimum wage and overtime rates.

1 DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
2 wages for all time worked in accordance with applicable law is evidenced by DEFENDANT's
3 business records. This policy and practice of DEFENDANT was intended to purposefully avoid
4 the payment of the correct compensation as required by the California Labor Code which
5 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
6 complied with the law.

7 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
8 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
9 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
10 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
11 time worked, meaning the time during which an employee was subject to the control of an
12 employer, including all the time the employee was permitted or suffered to permit this work.
13 DEFENDANT required these employees to work off the clock without paying them for all the
14 time they were under DEFENDANT's control. Specifically, DEFENDANT required
15 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
16 meal break. PLAINTIFF was from time to time interrupted by work assignments. PLAINTIFF
17 and other AGGRIEVED EMPLOYEES performed work for which they were not compensated.
18 Prior to clocking in for a shift, PLAINTIFF and other AGGRIEVED EMPLOYEES were
19 required to perform "pass downs" where information was relayed to them by other employees
20 of DEFENDANT prior to their shift starting. PLAINTIFF and other AGGRIEVED
21 EMPLOYEES were not paid for their work time prior to their shifts starting. Additionally,
22 DEFENDANT, as a matter of established company policy and procedure, administered a
23 practice of rounding the actual time worked and recorded by PLAINTIFF and AGGRIEVED
24 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their
25 employment, PLAINTIFF and AGGRIEVED EMPLOYEES were paid less than they would
26 have been paid had they been paid for actual recorded time rather than "rounded" time. As a
27 result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
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1 overtime compensation by working without their time being accurately recorded and without
2 compensation at the applicable minimum wage and overtime rates. To the extent that the time
3 worked off the clock does not qualify for overtime premium payment, DEFENDANT fails to
4 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
5 1197, and 1197.1.

6 15. State and federal law provides that employees must be paid overtime at one-and-
7 one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES
8 were compensated at an hourly rate plus incentive pay that is tied to specific elements of an
9 employee’s performance.

10 16. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
11 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
12 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
13 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
14 hourly basis with incentive compensation when the employees met the various performance
15 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
16 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
17 include the incentive compensation as part of the employees’ “regular rate of pay” for purposes
18 of calculating overtime pay. Management and supervisors described the incentive program to
19 potential and new employees as part of the compensation package. As a matter of law, the
20 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
21 be included in the “regular rate of pay.” The failure to do so has resulted in an underpayment
22 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
23 DEFENDANT.

24 17. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
26 knowingly failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the
27 correct rate of pay for all overtime worked. This policy and practice of DEFENDANT was
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1 intended to purposefully avoid the payment of the correct overtime compensation as required
2 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
3 over competitors who complied with the law. To the extent equitable tolling operates to toll
4 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should
5 be adjusted accordingly.

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

16 19. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
17 were from time to time also required to work in excess of four (4) hours without being provided
18 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
19 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
20 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
21 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
22 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
23 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
24 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
25 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
26 managers. Additionally, the applicable California Wage Order requires employers to provide
27 employees with off-duty rest periods, which the California Supreme Court defined as time
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1 during which an employee is relieved from all work related duties and free from employer
2 control. In so doing, the Court held that the requirement under California law that employers
3 authorize and permit all employees to take rest period means that employers must relieve
4 employees of all duties and relinquish control over how employees spend their time which
5 includes control over the locations where employees may take their rest period. Employers
6 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
7 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
8 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
9 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
10 leave the work premises during their rest period.

11 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
12 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
13 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
14 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
15 2802, employers are required to indemnify employees for all expenses incurred in the course
16 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
17 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
18 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
19 directions of the employer, even though unlawful, unless the employee, at the time of obeying
20 the directions, believed them to be unlawful."

21 21. In the course of their employment PLAINTIFF and other AGGRIEVED
22 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
23 cellular phones as a result of and in furtherance of their job duties as employees for
24 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
25 with the use of their personal cellular phones for DEFENDANT's benefit. As a result, in the
26 course of their employment with DEFENDANT the PLAINTIFF and other AGGRIEVED
27 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
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1 to costs related to the use of their personal cellular phones, on behalf of and for the benefit of
2 DEFENDANT.

3 22. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
4 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
5 to show, among other things, the correct gross and net wages earned and correct amount of time
6 worked. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
7 employees with an accurate itemized wage statement in writing showing, among other things,
8 gross wages earned and all applicable hourly rates in effect during the pay period and the
9 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated
10 Section 226 by failing to identify the correct rates of pay for regular, overtime and double time
11 payments. Aside, from the violations listed above in this paragraph, DEFENDANT failed to
12 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
13 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and
14 the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code
15 § 226.

16 23. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
17 EMPLOYEES, DEFENDANT engaged in a procedure which failed to accurately calculate and
18 record the correct overtime rate for the overtime worked by PLAINTIFF and other
19 AGGRIEVED EMPLOYEES. The proper calculation of these employees' overtime hour rates
20 is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
21 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
22 required overtime compensation for work performed by the AGGRIEVED EMPLOYEES and
23 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

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

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3 **JURISDICTION AND VENUE**

4 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10.

6 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
7 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
8 maintained offices and facilities in this County and/or conducts substantial business in this
9 County, and (ii) committed the wrongful conduct herein alleged in this County against
10 PLAINTIFF and the AGGRIEVED EMPLOYEES.

11 **FIRST CAUSE OF ACTION**

12 **For Violation of the Private Attorneys General Act**

13 **[Cal. Lab. Code §§ 2698, *et seq.*]**

14 **(By PLAINTIFF and Against All Defendants)**

15 27. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
16 paragraphs of this Complaint.

17 28. PAGA is a mechanism by which the State of California itself can enforce state
18 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
19 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
20 fundamentally a law enforcement action designed to protect the public and not to benefit private
21 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
22 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
23 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
24 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
25 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
26 subject to arbitration.

27 29. PLAINTIFF, and such persons that may be added from time to time who satisfy
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1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to
3 herself and all individuals who are or previously were employed by Defendants PHI Air
4 Medical, LLC and/or PHI Health, LLC in California and classified as non-exempt employees
5 ("AGGRIEVED EMPLOYEES") during the time period of July 9, 2019 until a date as
6 determined by the Court (the "PAGA PERIOD").

7 30. On July 9, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
8 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
9 the specific provisions of this code alleged to have been violated as required by Labor Code §
10 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
11 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
12 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
13 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

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

1 EMPLOYEES.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
4 severally, as follows:

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

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

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

11 Dated: March 16, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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15 By: 

Norman B. Blumenthal

16 Attorneys for Plaintiff
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