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ELECTRONICALLY FILED

Superior Court of California,
County of Placer

12-15-2020

By: Mavis Anderson, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF PLACER**

10 TANYA RIPLEY, on behalf of the State of
11 California, as a private attorney general,

12 Plaintiff,

13 vs.

14 CERNER CORPORATION, a Corporation;
15 and Does 1 through 50, Inclusive;

16 Defendants.

Case No. S-CV-0045961

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).

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

INTRODUCTION

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

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

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

THE PARTIES

4. Defendant Cerner Corporation (“DEFENDANT”) is a Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

5. DEFENDANT is an American supplier of health information technology services,

1 devices, and hardware.

2 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay and meal and rest periods from July of 2018 to September
4 17, 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT
5 as a non-exempt employee paid in whole or in part on an hourly basis.

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

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

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

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

11 THE CONDUCT

12 11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
13 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
14 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
15 calculate minimum and overtime wages for time worked by PLAINTIFF and other
16 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
17 compensation. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
18 wages due them for working without compensation at the correct minimum wage and overtime
19 rates. DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the
20 correct compensation for all time worked in accordance with applicable law is evidenced by
21 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
22 purposefully avoid the payment of the correct compensation as required by California law which
23 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
24 complied with the law.

25 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
26 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
27 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
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1 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
2 time worked, meaning the time during which an employee was subject to the control of an
3 employer, including all the time the employee was permitted or suffered to permit this work.
4 DEFENDANT required these employees to work off the clock without paying them for all the
5 time they were under DEFENDANT's control. Specifically, DEFENDANT required
6 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
7 meal break. PLAINTIFF was from time to time interrupted by work assignments. Indeed there
8 were days where PLAINTIFF did not even receive a partial lunch. Additionally, DEFENDANT
9 also required PLAINTIFF and other AGGRIEVED EMPLOYEES to work off the clock after
10 they had already clocked out of DEFENDANT's timekeeping system at the end of their shifts.
11 This work included but was not limited to, building, fixing, and testing device integration. As
12 a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
13 overtime compensation by working without their time being accurately recorded and without
14 compensation at the applicable minimum wage and overtime rates. To the extent that the time
15 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to
16 pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
17 1197, and 1197.1.

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

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

9 15. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
11 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
12 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
13 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
14 compensation as required by California law which allowed DEFENDANT to illegally profit and
15 gain an unfair advantage over competitors who complied with the law. To the extent equitable
16 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
17 PAGA PERIOD should be adjusted accordingly.

18 16. As a result of their rigorous work schedules, PLAINTIFF and other
19 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
20 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
21 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
22 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
23 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
24 off-duty meal period from time to time in which these employees were required by
25 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
27 accordance with DEFENDANT's corporate policy and practice.

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

23 18. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
24 employees with an accurate itemized wage statement in writing showing, among other things,
25 gross wages earned and all applicable hourly rates in effect during the pay period and the
26 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
27 failed to provide to PLAINTIFF and the AGGRIEVED EMPLOYEES wage statements that
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1 identify the correct gross and net wages earned, the applicable number of hours worked and
2 rates of pay. Aside, from the violations listed above in this paragraph, DEFENDANT failed
3 to issue to PLAINTIFF and other AGGRIEVED EMPLOYEES an itemized wage statement that
4 lists all the requirements under California Labor Code 226 *et seq.*

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

15 20. In the course of their employment PLAINTIFF and other AGGRIEVED
16 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
17 cellular phones as a result of and in furtherance of their job duties as employees for
18 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
19 associated with the use of their personal cellular phones and home offices for DEFENDANT's
20 benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
21 DEFENDANT to use their personal cellular phones for work related issues. Additionally, these
22 employees were also required to use their home offices to conduct work for Defendant and
23 Defendant failed to reimburse them for their home office expenses. As a result, in the course
24 of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES
25 incurred unreimbursed business expenses which included, but were not limited to, costs related
26 to the use of their personal cellular phones and home offices all on behalf of and for the benefit
27 of DEFENDANT.

1 21. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
2 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
3 to accurately calculate and record the correct overtime rate for the overtime worked by
4 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
5 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
6 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
7 calculate and/or pay all required overtime compensation for work performed by the
8 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
9 promulgated thereunder as herein alleged.

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

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16 **JURISDICTION AND VENUE**

17 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10.

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

24 **FIRST CAUSE OF ACTION**

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

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

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

28 25. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-24,

1 supra, as though fully set forth at this point.

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

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

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

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

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PRAYER FOR RELIEF

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

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

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

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B) An award of attorneys' fees and cost of suit, as allowable under the

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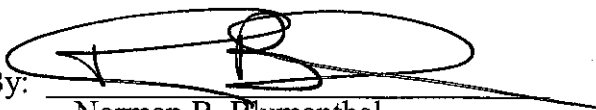
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¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 law, including, but not limited to, pursuant to Labor Code §2699.

2 Dated: December 15, 2020 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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4
5 By: 
6 Norman B. Blumenthal