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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

KATHLEEN O'BRIEN, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

CERIDA INVESTMENT CORP., a
Corporation; DELOITTE CONSULTING
L.P., a Limited Partnership; and DOES 1
through 50, inclusive,

Defendants.

Case No. **21CV384527**

**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,
221, 226(a), 226.7, 233, 246, 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 Kathleen O'Brien ("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 Cerida Investment Corp. and Deloitte
8 Consulting L.P. (referred to as "DEFENDANT") seeking only to recover PAGA civil
9 penalties for herself, and on behalf of all current and former aggrieved employees that
10 worked for DEFENDANT. 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
17 sole 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 –
20 that is, penalties and any other relief the Court deems proper pursuant to the PAGA.
21 Nothing in this complaint should be construed as attempting to obtain any relief that would
22 not be available in a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant Cerida Investment Corp., is a Corporation that at all relevant times
25 mentioned herein conducted and continues to conduct substantial business in the state of
26 California.

27 5. Defendant Deloitte Consulting L.P. is a Limited Partnership that at all relevant
28

1 times mentioned herein conducted and continues to conduct substantial business in the state of
2 California.

3 6. Defendants Cerida Investment Corp. and Deloitte Consulting L.P. were the joint
4 employers of PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF
5 performed work for respectively, and are therefore jointly responsible as employers for the
6 conduct alleged herein, and are therefore collectively referred to herein as "DEFENDANT."

7 7. DEFENDANT owns and operates call centers and provides contact management
8 solutions.

9 8. PLAINTIFF was employed by DEFENDANT in California from June of 2020
10 until October of 2020 and was at all times classified by DEFENDANT as a non-exempt
11 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
12 payment of minimum and overtime wages due for all time worked.

13 9. PLAINTIFF, and such persons that may be added from time to time who satisfy
14 the requirements and exhaust the administrative procedures under the Private Attorney General
15 Act, brings this Representative Action on behalf of the State of California with respect to herself
16 and all individuals who are or previously were employed by Cerida Investment Corp. and/or
17 Deloitte Consulting L.P. in California and who were classified as non-exempt employees
18 ("AGGRIEVED EMPLOYEES") during the time period of March 18, 2020 until a date as
19 determined by the Court (the "PAGA PERIOD").

20 10. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
21 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
22 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
23 violation of California Labor Code §§201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233,
24 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
25 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
26 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
27 employees within the meaning of Labor Code § 2699, *et seq.*

28 11. The true names and capacities, whether individual, corporate, subsidiary,

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

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

THE CONDUCT

13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and the other AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Additionally, before clocking in, PLAINTIFF and the AGGRIEVED EMPLOYEES, were required to wait in-line for a COVID-19 screening, one which included questions about their current set of symptoms before each

1 employee was scanned and screened for a fever. PLAINTIFF was not allowed to clock in until
2 this process was completed. Also, DEFENDANT, as a matter of established company policy
3 and procedure, administered a uniform practice of rounding the actual time worked and
4 recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of
5 DEFENDANT, so that during the course of their employment, PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been paid
7 for actual recorded time rather than “rounded” time. Additionally, DEFENDANT intentionally
8 and unlawfully failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
9 compensable work time which was spent logging onto computers, logging onto the virtual
10 private networks, initializing software applications, and preparing to take and/or make phone
11 calls. This is due to the fact that DEFENDANT had in place two conflicting policies and
12 practices. On the one hand, these employees were not paid until the start of their scheduled
13 shifts and on the other hand, these employees were required to work before the start of their
14 scheduled shifts preparing their computer systems because it was a requirement for the
15 employees to properly perform the functions of their jobs. DEFENDANT’s policy and practice
16 not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is
17 evidenced by DEFENDANT’s business records. As a result, DEFENDANT failed to pay
18 PLAINTIFF and other AGGRIEVED EMPLOYEES the proper minimum and overtime wages.

19 14. In addition, State law provides that employees must be paid overtime and meal
20 and rest break premium pay at one-and-one-half times their “regular rate of pay.” PLAINTIFF
21 and other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay
22 that is tied to specific elements of an employee’s performance.

23 15. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
24 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
25 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
26 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
27 hourly basis with incentive compensation when the employees met the various performance
28 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay

1 overtime and premiums for meal and rest break violations to PLAINTIFF and other
2 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
3 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
4 premium pay for meal and rest break violations. As a matter of law, the incentive compensation
5 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the
6 "regular rate of pay." The failure to do so has resulted in an underpayment of overtime
7 compensation and meal and rest break premium pay to PLAINTIFF and other AGGRIEVED
8 EMPLOYEES by DEFENDANT.

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

15 17. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
16 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
17 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
18 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
19 for more than five (5) hours during some shifts without receiving a meal break. Further,
20 DEFENDANT from time to time failed to provide PLAINTIFF and other AGGRIEVED
21 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
22 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
23 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
24 and in accordance with DEFENDANT's corporate policy and practice.

25 18. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
26 were also required from time to time to work in excess of four (4) hours without being provided
27 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
28 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to

1 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
2 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
3 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
4 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
5 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
6 to provide employees with off-duty rest periods, which the California Supreme Court defined
7 as time during which an employee is relieved from all work related duties and free from
8 employer control. In so doing, the Court held that the requirement under California law that
9 employers authorize and permit all employees to take rest period means that employers must
10 relieve employees of all duties and relinquish control over how employees spend their time
11 which includes control over the locations where employees may take their rest period.
12 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
13 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
14 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
15 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
16 not leave the work premises during their rest period. As a result of PLAINTIFF being required
17 to be present on the premises she was from time to time required by DEFENDANT to work
18 during what should of been her off duty rest period.

19 19. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
20 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
21 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
22 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
23 time worked, meaning the time during which an employee was subject to the control of an
24 employer, including all the time the employee was permitted or suffered to permit this work.
25 DEFENDANT required these employees to work off the clock without paying them for all the
26 time they were under DEFENDANT's control, including, but not limited to, time spent
27 undergoing mandatory drug testing or any other testing and/or examination required as a
28 condition of employment. Specifically, PLAINTIFF worked through her various meal and rest

1 breaks as calls regularly cut into her supposed breaks. Additionally, PLAINTIFF was required
2 to read a daily bulletin provided by the DEFENDANT before clocking in. This work also was
3 done off-the-clock. As such, DEFENDANT knew or should have known that PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES were under compensated for all time worked. As a
5 result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time worked by working
6 without their time being accurately recorded and without compensation at the applicable
7 minimum wage and overtime wage rates. To the extent that the time worked off the clock did
8 not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for
9 the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

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

16 23. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
17 to collect or receive from an employee any part of wages theretofore paid by said employer
18 to said employee.” DEFENDANT fails to pay all compensation due to PLAINTIFF and the
19 other AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable
20 to PLAINTIFF and the other AGGRIEVED EMPLOYEES, fails to disclose all aspects of
21 the deductions from compensation payable to PLAINTIFF and the other AGGRIEVED
22 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable
23 pay period and upon termination. PLAINTIFF and the other AGGRIEVED EMPLOYEES
24 seek recovery of all illegal deductions from wages according to proof, related penalties,
25 interest, attorney fees and costs.

26 24. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
27 employment are due and payable twice during each calendar month, on days designated in
28 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d)

1 expressly requires employers to pay employees all wages owed within seven (7) days of the
2 close of the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and
3 other AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the
4 close of the payroll period.

5 25. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
7 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT
9 is intended to purposefully avoid the payment for all time worked as required by California
10 law which allows DEFENDANT to illegally profit and gain an unfair advantage over
11 competitors who complied with the law. To the extent equitable tolling operates to toll
12 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
13 should be adjusted accordingly.

14 26. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
15 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which
16 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and
17 other AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal
18 and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional
19 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
20 and/or pay all required compensation for work performed by the AGGRIEVED
21 EMPLOYEES and violated the California Labor Code and regulations promulgated
22 thereunder as herein alleged.

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

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

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

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

30. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

32. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California

1 with respect to herself and all individuals who are or previously were employed by Cerida
2 Investment Corp. and/or Deloitte Consulting L.P. in California and who were classified as
3 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of March
4 18, 2020 until a date as determined by the Court (the "PAGA PERIOD").

5 33. On March 18, 2021, PLAINTIFF gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required by
8 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
9 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
10 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
11 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

12 34. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
15 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
16 (d) failed to pay overtime and sick pay wages, (e) failed to reimburse employees for required
17 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
18 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
19 233, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
20 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
21 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
22 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
23 Attorney General Act of 2004 as the representative of the State of California for the illegal
24 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and 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: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff