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Assigned for all purposes to
Judge Jeffrey B. Jones
including trial**SUPERIOR COURT OF THE STATE OF CALIFORNIA****IN AND FOR THE COUNTY OF IMPERIAL**MICHAEL ASHLOCK, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

SYNERGY STAFFING INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. ECU002008**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, 227.3, 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 Michael Ashlock ("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 his own acts and knowledge which are based on personal
5 knowledge, the following:

6 7 INTRODUCTION

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

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself 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 24 THE PARTIES

25 4. Defendant Synergy Staffing Inc. ("DEFENDANT") is a corporation that at all
26 relevant times mentioned herein conducted and continues to conduct substantial business in the
27 state of California.

28 5. DEFENDANT specializes in providing contract, temp-to-perm, per diem, and

1 direct hire personnel to many industries in California.

2 6. PLAINTIFF was employed by DEFENDANT from December of 2020 to April
3 of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
4 an hourly basis, and entitled to the legally required meal and rest periods and payment of
5 minimum and overtime wages due for all time worked.

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
9 himself and all individuals who are or previously were employed by DEFENDANT in
10 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
11 during the time period of April 12, 2020 until a date as determined by the Court (the "PAGA
12 PERIOD").

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
17 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
18 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
19 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
20 employees within the meaning of Labor Code § 2699, *et seq.*

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

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.

10 THE CONDUCT

11
12 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
13 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
16 and the AGGRIEVED EMPLOYEES to work from time to time while they were clocked out
17 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF
18 and the AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time
19 they performed duties while on their meal break, specifically by failing to provide enough labor
20 hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and the other
21 AGGRIEVED EMPLOYEES to complete on a daily and/or weekly basis. Further, PLAINTIFF
22 and other AGGRIEVED EMPLOYEES from time to time were not paid wages for all time
23 worked, including overtime wages, such that in the aggregate employees were underpaid wages
24 as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
25 employees. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid less than they would
26 have been paid had they been paid for actual recorded time rather than "rounded time."
27 Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFF and the
28 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a

1 condition of employment, required these employees to wait in line and submit to mandatory
2 temperature checks for COVID-19 screening prior to clocking into DEFENDANT's
3 timekeeping system for the workday, as well as time spent undergoing mandatory drug testing
4 or any other testing and/or examination required as a condition of employment. As a result,
5 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
6 compensation by from time to time working without their time being accurately recorded and
7 without compensation at the applicable minimum wage and overtime rates. DEFENDANT's
8 policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
9 worked is evidenced by DEFENDANT's business records.

10 12. State and federal law provides that employees must be paid overtime and meal and
11 rest break premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and
12 other AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that
13 is tied to specific elements of an employee's performance.

14 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
15 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
16 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
17 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
18 hourly basis with incentive compensation when the employees met the various performance
19 goals set by DEFENDANT, including but not limited to housing stipend wages and per diem
20 wages. However, when calculating the regular rate of pay in order to pay overtime and
21 premiums for meal and rest break violations to PLAINTIFF and other AGGRIEVED
22 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
23 employees' "regular rate of pay" for purposes of calculating overtime pay and premium pay for
24 meal and rest break violations. Management and supervisors described the incentive program
25 to potential and new employees as part of the compensation package. As a matter of law, the
26 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
27 be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
28 overtime compensation and meal and rest break premium pay to PLAINTIFF and other

1 AGGRIEVED EMPLOYEES by DEFENDANT.

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

12 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
13 were also required from time to time to work in excess of four (4) hours without being provided
14 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
15 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
16 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
17 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
18 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
19 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
20 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
21 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
22 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
23 Order requires employers to provide employees with off-duty rest periods, which the California
24 Supreme Court defined as time during which an employee is relieved from all work related
25 duties and free from employer control. In so doing, the Court held that the requirement under
26 California law that employers authorize and permit all employees to take rest period means that
27 employers must relieve employees of all duties and relinquish control over how employees
28 spend their time which includes control over the locations where employees may take their rest

1 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
2 five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and
3 other AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful based on
4 DEFENDANT's rule which states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot
5 leave the work premises during their rest period.

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

19 17. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
20 employment are due and payable twice during each calendar month, on days designated in
21 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
22 requires employers to pay employees all wages owed within seven (7) days of the close of the
23 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
24 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
25 payroll period, including but not limited to the "Commission" wage payment that was payment
26 for regular hours worked in previous pay periods.

27 18. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
28 to collect or receive from an employee any part of wages theretofore paid by said employer to

1 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
2 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
3 PLAINTIFF and the other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
4 deductions from compensation payable to PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable pay
6 period and upon termination. PLAINTIFF and the other AGGRIEVED EMPLOYEES seek
7 recovery of all illegal deductions from wages according to proof, related penalties, interest,
8 attorney fees and costs.

9 19. 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 earn non-discretionary remuneration. Rather than pay sick
12 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
13 AGGRIEVED EMPLOYEES at their base rates of pay.

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

24 21. In the course of their employment PLAINTIFF and other AGGRIEVED
25 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
26 cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT’s benefit.

1 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
2 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
3 (which also results in minimum wage and overtime violations). As a result, in the course of
4 their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES
5 incurred unreimbursed business expenses which included, but were not limited to, costs related
6 to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

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

25 24. All of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
28 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018

AJDAR 12157 (Certified for Publication 12/19/18).

JURISDICTION AND VENUE

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

26. 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, resides in this County, 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)

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

28. 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.

29. PLAINTIFF, and such persons that may be added from time to time who satisfy

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 himself and all individuals who are or previously were employed by DEFENDANT in
4 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
5 during the time period of April 12, 2020 until a date as determined by the Court (the "PAGA
6 PERIOD").

7 30. On April 12, 2021, PLAINTIFF gave written notice by electronic mail to the
8 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
9 employer of the specific provisions of this code alleged to have been violated as required by
10 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
11 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
12 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
13 the State of 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 minimum wages, (d) failed
18 to pay overtime and sick pay wages, (e) failed to reimburse employees for required expenses,
19 and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
20 listed in Labor Code §§201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510,
21 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
22 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise
23 to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
24 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
25 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
26 the other AGGRIEVED EMPLOYEES.

27
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 28, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff