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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

TIYANNA GRAVES, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

KINDERCARE EDUCATION LLC, a
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

Case No. CVRI 21 03557

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

6 INTRODUCTION

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

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

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

22 THE PARTIES

23 4. Defendant Kindercare Education LLC is a limited liability company that at all
24 relevant times mentioned herein conducted and continues to conduct substantial and regular
25 business throughout California.

26 5. DEFENDANT provides early childhood educational services. DEFENDANT
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1 offers daycare centers, before and after school educational programs, child care center consulting
2 services, and summer camps. .

3 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
4 employee entitled to overtime pay and meal and rest periods from September of 2020 to
5 November 25, 2020. PLAINTIFF was at all times relevant mentioned herein classified by
6 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
7 received additional compensation from DEFENDANT in the form of non-discretionary incentive
8 wages.

9 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, brings this Representative Action on behalf of the State of California with respect to herself
12 and all individuals who are or previously were employed by DEFENDANT in California and
13 who were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the time
14 period of May 21, 2020 until a date as determined by the Court (the "PAGA PERIOD").

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

23 9. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
25 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
26 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
27 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
3 responsible in some manner for one or more of the events and happenings that proximately
4 caused the injuries and damages hereinafter alleged.

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

13 14 **THE CONDUCT**

15 11. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
16 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
17 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
19 time worked, meaning the time during which an employee was subject to the control of an
20 employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required these employees to work off the clock without paying them for all the
22 time they were under DEFENDANT's control including, but not limited to, time spent
23 undergoing mandatory drug testing or any other testing and/or examination required as a
24 condition of employment. Specifically, DEFENDANT required PLAINTIFF to work while
25 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
26 was from time to time interrupted by work assignments. Also, DEFENDANT, as a matter of
27 established company policy and procedure, administered a uniform practice of rounding the
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1 actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always
2 to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and
3 the AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been
4 paid for actual recorded time rather than “rounded” time. As a result, PLAINTIFF and other
5 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by working
6 without their time being accurately recorded and without compensation at the applicable
7 minimum wage and overtime rates. To the extent that the time worked off the clock did not
8 qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for the
9 time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1. Further,
10 PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time were not paid wages for
11 all time worked, including overtime wages, such that in the aggregate employees were underpaid
12 wages as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by
13 its employees.

14 12. State law provides that employees must be paid overtime and meal and rest break
15 premium pay at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
16 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
17 tied to specific elements of an employee’s performance.

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

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

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

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

20 17. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
21 employees with an accurate itemized wage statement in writing showing, among other things,
22 gross wages earned and all applicable hourly rates in effect during the pay period and the
23 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
24 failed to provide to PLAINTIFF and AGGRIEVED EMPLOYEES wage statements that
25 identify the correct gross and net wages earned, the applicable number of hours worked and
26 rates of pay. Specifically, DEFENDANT violated Cal. Lab. Code 226(a)(7) by failing to list
27 the last four digits of the employee's social security number or an employee identification
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1 number other than a social security number. Aside, from the violations listed above in this
2 paragraph, DEFENDANT failed to issue to PLAINTIFF and other AGGRIEVED
3 EMPLOYEES an itemized wage statement that lists all the requirements under California Labor
4 Code 226 *et seq.*

5 18. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
6 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
7 and other non-exempt employees earned non-discretionary remuneration, including but not
8 limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular
9 rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
10 EMPLOYEES at their base rates of pay.

11 19. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
12 employment are due and payable twice during each calendar month, on days designated in
13 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
14 requires employers to pay employees all wages owed within Seven (7) days of the close of the
15 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
16 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
17 payroll period.

18 20. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
19 to collect or receive from an employee any part of wages theretofore paid by said employer to
20 said employee.” DEFENDANT made unlawful deductions from compensation payable to
21 PLAINTIFF and AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions
22 from compensation payable to PLAINTIFF and AGGRIEVED EMPLOYEES, and thereby
23 failed to pay these employees all wages due at each applicable pay period and upon termination.

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

7 22. In the course of their employment PLAINTIFF and other AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
9 cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
11 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
12 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
13 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
14 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
15 for the benefit of DEFENDANT.

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 failed
18 to accurately calculate and record the correct overtime rate for the overtime worked by
19 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
20 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
21 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
22 calculate and/or pay all required overtime compensation for work performed by the
23 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
24 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
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1 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
2 AJDAR 12157 (Certified for Publication 12/19/18).

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4 **JURISDICTION AND VENUE**

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

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

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

1 29. PLAINTIFF, and such persons that may be added from time to time who
2 satisfy the requirements and exhaust the administrative procedures under the Private
3 Attorney General Act, brings this Representative Action on behalf of the State of California
4 with respect to herself and all individuals who are or previously were employed by
5 DEFENDANT in California and who were classified as non exempt employees
6 (“AGGRIEVED EMPLOYEES”) during the time period of May 21, 2020 until a date as
7 determined by the Court (the "PAGA PERIOD").

8 30. On May 21, 2021, PLAINTIFF gave written notice by electronic mail to the
9 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
10 employer of the specific provisions of this code alleged to have been violated as required by
11 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
12 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
13 now commence a representative civil action under PAGA pursuant to Section 2699 as the
14 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
15 defined.

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

5
6 **PRAYER FOR RELIEF**

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

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

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

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

15 Dated: August 4, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
16 LLP

17
18 By: /s/ Norman Blumenthal
19 Norman B. Blumenthal
20 Attorneys for Plaintiff
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).