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

13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

14 BIANCA CURRY, on behalf of the State of
15 California, as a private attorney general,

16 Plaintiff,

17 vs.

18 UNITED HEALTH CARE STAFFING,
19 INC., a California Corporation; ON-CALL
20 THERAPISTS, INC., a California
21 Corporation; DOES 1 through 50, inclusive,

22 Defendants.

Case No. **CGC-22-598120**

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), and the applicable
Wage Order(s)

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

02/14/2022

Clerk of the Court

BY: LAURA SIMMONS

Deputy Clerk

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

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants United Health Care Staffing,
8 Inc. and On-Call Therapists, Inc. (referred to as “DEFENDANT”) seeking only to recover
9 PAGA civil penalties for herself, and on behalf of all current and former aggrieved employees
10 that 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 sole
17 nature of this action.

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

23 **THE PARTIES**

24 4. Defendant United Health Care Staffing, Inc. is a California corporation that at all
25 relevant times mentioned herein conducted and continues to conduct substantial business in the
26 state of California.

27 5. Defendant On-Call Therapists, Inc. is a California corporation 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 United Health Care Staffing, Inc. and On-Call Therapists, Inc. were the
4 joint 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 is a staffing company that provides healthcare services in
8 California.

9 8. PLAINTIFF was employed by DEFENDANT from April of 2021 to August of
10 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
11 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
12 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 United Health Care Staffing, Inc.
17 and/or On-Call Therapists, Inc. in California and classified as non-exempt employees
18 ("AGGRIEVED EMPLOYEES") during the time period of August 27, 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, 226(a), 226.7, 351, 510,
24 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
25 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
26 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
27 the meaning of Labor Code § 2699, *et seq.*

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

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

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

17 THE CONDUCT

18
19 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
20 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
21 meaning the time during which an employee is subject to the control of an employer, including
22 all the time the employee is suffered or permitted to work. PLAINTIFF and other
23 AGGRIEVED EMPLOYEES worked off the clock with respect to time spent undergoing
24 mandatory drug testing or any other testing and/or examination required as a condition of
25 employment. DEFENDANT also required PLAINTIFF and other AGGRIEVED EMPLOYEES
26 to work from time to time while they were clocked out for what was supposed to be their off
27 duty meal break. DEFENDANT required PLAINTIFF and the AGGRIEVED EMPLOYEES
28 to work off the clock without paying them for all the time they performed duties while on their

1 meal break, specifically by failing to provide enough labor hours to accomplish all the job tasks
2 that DEFENDANT expected PLAINTIFF and other AGGRIEVED EMPLOYEES to complete
3 on a daily and/or weekly basis. Further, during the PAGA PERIOD, DEFENDANT required
4 PLAINTIFF and other AGGRIEVED EMPLOYEES to wait in line and submit to mandatory
5 temperature checks for COVID-19 screening and also complete a COVID-19 questionnaire
6 regarding whether these employees had any symptoms prior to clocking into DEFENDANT's
7 timekeeping system for the workday. Finally, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES from time to time were not paid wages for all time worked, including overtime
9 wages, such that in the aggregate employees were underpaid wages as a result of
10 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. As
11 a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
12 overtime compensation by from time to time working without their time being accurately
13 recorded and without compensation at the applicable minimum wage and overtime rates.
14 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
15 EMPLOYEES for all time worked is evidenced by DEFENDANT's business records.

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

28 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES

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

22 16. State law provides that employees must be paid overtime and meal and rest break
23 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
24 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
25 tied to specific elements of an employee's performance.

26 17. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
27 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
28 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for

1 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
2 hourly basis with incentive compensation when the employees met the various performance
3 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
4 overtime and premiums for meal and rest break violations to PLAINTIFF and other
5 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
6 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
7 premium pay for meal and rest break violations. Management and supervisors described the
8 incentive program to potential and new employees as part of the compensation package. As a
9 matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
10 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted
11 in an underpayment of overtime compensation and meal and rest break premium pay to
12 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

13 18. DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES with complete and accurate wage statements which failed to show, among other
15 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
16 employer shall furnish each of his or her employees with an accurate itemized wage statement
17 in writing showing, among other things, gross wages earned and all applicable hourly rates in
18 effect during the pay period and the corresponding amount of time worked at each hourly rate.
19 PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time paid on an hourly
20 basis. As such, the wage statements should reflect all applicable hourly rates during the pay
21 period and the total hours worked, and the applicable pay period in which the wages were
22 earned pursuant to California Labor Code Section 226(a)(2). The wage statements
23 DEFENDANT provided to PLAINTIFF and other AGGRIEVED EMPLOYEES failed to
24 identify such information. More specifically, the wage statements failed to identify the accurate
25 total hours worked each pay period. When the hours shown on the wage statements were added
26 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
27 Lab. Code 226 (a)(2). Aside, from the violations listed above, DEFENDANT failed to issue
28 to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor

1 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
2 other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

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

18 21. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
19 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
20 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
21 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
22 underpaid sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates
23 of pay.

24 22. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for non-exempt
25 employees be calculated by dividing the employee’s total wages, not including overtime
26 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
27 of employment.

28 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at

1 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
2 non-discretionary incentive wages which increased their regular rate of pay. However, when
3 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and other AGGRIEVED
4 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
5 Code Section 246.

6 24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
7 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
8 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
9 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
10 PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are
11 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

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

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

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

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

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

23 28. 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 that
26 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018.

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1 Attorney General Act, brings this Representative Action on behalf of the State of California
2 with respect to herself and all individuals who are or previously were employed by
3 United Health Care Staffing, Inc. and/or On-Call Therapists, Inc. in California and
4 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time
5 period of August 27, 2020 until a date as determined by the Court (the "PAGA PERIOD").

6 34. On August 27, 2021, PLAINTIFF gave written notice by electronic mail to the
7 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
10 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
11 now commence a representative civil action under PAGA pursuant to Section 2699 as the
12 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
13 defined.

14 35. 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
16 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
17 properly record and provide legally required meal and rest periods, (c) failed to pay
18 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
19 reimburse employees for required expenses, and (f) failed to pay wages when due, all in
20 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
21 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
22 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
23 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
24 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
25 Labor Code Private Attorney General Act of 2004 as the representative of the State of
26 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED

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

1 EMPLOYEES.

2 **PRAYER FOR RELIEF**

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

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

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

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

11 Dated: February 11, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
12 LLP

13
14 By: /s/ Nicholas De Blouw
Nicholas J. De Blouw

15 Attorneys for Plaintiff
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