

FILED
Superior Court of California,
Sacramento
07/27/2022
mwhitaker
By _____, Deputy
Case Number:
34-2022-00314716

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

EDWARD VIRGEN III, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

CURALEAF CA, INC., a California
Corporation; CURA CA LLC, a California
Limited Liability Company; CURA CS INC.,
a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. _____

**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, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B)

BY FAX

1 Plaintiff Edward Virgen III (“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 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants Curaleaf CA, Inc., Cura CA LLC,
8 and Cura CS Inc. (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself,
9 and 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 himself 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 Curaleaf CA, Inc. is a corporation that at all relevant times mentioned
24 herein conducted and continues to conduct substantial business in the state of California.

25 5. Defendant Cura CA LLC is a limited liability corporation that at all relevant times
26 mentioned herein conducted and continues to conduct substantial business in the state of
27 California.
28

1 6. Defendant Cura CS Inc. is a corporation that at all relevant times mentioned
2 herein conducted and continues to conduct substantial business in the state of California.

3 7. Curaleaf CA, Inc., Cura CA LLC, and Cura CS Inc. were the joint employers of
4 PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for
5 respectively, and are therefore jointly responsible as employers for the conduct alleged herein,
6 and are therefore collectively referred to herein as "DEFENDANT."

7 8. DEFENDANT produces and provides cannabis for health and wellness.

8 9. PLAINTIFF was employed by DEFENDANT in California from May of 2018 to
9 March of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
10 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
11 of minimum and overtime wages due for all time worked.

12 10. PLAINTIFF, and such persons that may be added from time to time who satisfy
13 the requirements and exhaust the administrative procedures under the Private Attorney General
14 Act, brings this Representative Action on behalf of the State of California with respect to
15 himself and all individuals who are or previously were employed by Curaleaf CA, Inc. and/or
16 Cura CA LLC, and/or Cura CS Inc. in California and classified as non-exempt employees
17 ("AGGRIEVED EMPLOYEES") during the time period of October 29, 2020 until a date as
18 determined by the Court (the "PAGA PERIOD").

19 11. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
20 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
21 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
22 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
23 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
24 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby gives
25 rise to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and
26 all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code

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

1 § 2699, *et seq.*

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

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

19 **THE CONDUCT**

20 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
21 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
22 meaning the time during which an employee is subject to the control of an employer, including
23 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
24 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they were
25 under DEFENDANT's control. Among other things, DEFENDANT required PLAINTIFF to
26 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
27 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
28 should have been PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED

1 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
2 testing or any other testing and/or examination required as a condition of employment.
3 DEFENDANT, as a matter of established company policy and procedure, administered a
4 uniform practice of rounding the actual time worked and recorded by PLAINTIFF and other
5 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
6 of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES were paid less than
7 they would have been paid had they been paid for actual recorded time rather than “rounded”
8 time. Additionally, DEFENDANT engaged in the practice of requiring PLAINTIFF and
9 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
10 condition of employment, required these employees to submit to mandatory temperature checks
11 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT’s
12 timekeeping system for the workday. As a result, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES forfeited minimum wage, overtime wage compensation, and off-duty meal
14 breaks by working without their time being correctly recorded and without compensation at the
15 applicable rates. DEFENDANT’s policy and practice not to pay PLAINTIFF and other
16 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT’s business
17 records.

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

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

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

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

21 18. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
22 were also required from time to time to work in excess of four (4) hours without being provided
23 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
24 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
25 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
26 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
27 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
28 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour

1 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
2 to provide employees with off-duty rest periods, which the California Supreme Court defined
3 as time during which an employee is relieved from all work related duties and free from
4 employer control. In so doing, the Court held that the requirement under California law that
5 employers authorize and permit all employees to take rest period means that employers must
6 relieve employees of all duties and relinquish control over how employees spend their time
7 which includes control over the locations where employees may take their rest period.
8 Employers cannot impose controls that prohibit an employee from taking a 0 walk - five minutes
9 out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
10 AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful based on
11 DEFENDANT's rule which states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot
12 leave the work premises during their rest period.

13 19. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
14 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
15 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
16 DEFENDANT was required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for
17 all time worked, meaning the time during which an employee was subject to the control of an
18 employer, including all the time the employee was permitted or suffered to permit this work.
19 DEFENDANT required these employees to work off the clock without paying them for all the
20 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
21 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
22 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
23 time worked by working without their time being accurately recorded and without compensation
24 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
25 off the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
26 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
27 1197, and 1197.1.

28 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

1 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
2 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
3 provides that every employer shall furnish each of his or her employees with an accurate
4 itemized wage statement in writing showing, among other things, gross wages earned and all
5 applicable hourly rates in effect during the pay period and the corresponding amount of time
6 worked at each hourly rate. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES
7 were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly
8 rates during the pay period and the total hours worked, and the applicable pay period in which
9 the wages were earned pursuant to California Labor Code Section 226(a). The wage statements
10 Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such
11 information. More specifically, the wage statements failed to identify the accurate total hours
12 worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). When the hours
13 shown on the wage statements were added up, they did not equal the actual total hours worked
14 during the pay period. Aside, from the violations listed above in this paragraph, DEFENDANT
15 failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
16 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
17 PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violated
18 Cal. Lab. Code § 226.

19 21. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
20 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
21 wages are paid not more than seven calendar days following the close of the payroll period.
22 Cal. Lab. Code § 210 provides:

23 [I]n addition to, and entirely independent and apart from, any other penalty provided in
24 this article, every person who fails to pay the wages of each employee as provided in
25 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
26 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

27 22. DEFENDANT from time to time failed to pay PLAINTIFF and other
28 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in

1 accordance with Cal. Lab. Code § 204(d).

2 23. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
3 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
4 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
5 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
6 underpaid sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates
7 of pay.

8 24. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
9 employees be calculated by dividing the employee's total wages, not including overtime
10 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
11 of employment.

12 25. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
13 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
14 non-discretionary incentive wages which increased their regular rate of pay. However, when
15 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and AGGRIEVED
16 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
17 Code Section 246.

18 26. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
19 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
20 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
21 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
22 PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are
23 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

24 27. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
25 to collect or receive from an employee any part of wages theretofore paid by said employer to
26 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
27 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
28 PLAINTIFF and other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the

1 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
2 and thereby failed to pay these employees all wages due at each applicable pay period and upon
3 termination.

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

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

24 30. All of the conduct and violations alleged herein occurred during the
25 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
26 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
27 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
28 2018 AJDAR 12157 (Certified for Publication 12/19/18).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

$$\begin{matrix} 2 \\ 3 \end{matrix}$$

4
5
6
7
8
9

0

1

2

3

4
5

6
7
8
9
10
11
12
13
14
15

26
27

1 Act, brings this Representative Action on behalf of the State of California with respect to
2 himself and all individuals who are or previously were employed by Curaleaf CA, Inc. and/or
3 Cura CA LLC, and/or Cura CS Inc. in California and classified as non-exempt employees
4 (“AGGRIEVED EMPLOYEES”) during the time period of October 29, 2020 until a date as
5 determined by the Court (the "PAGA PERIOD").

6 36. On October 29, 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 to
10 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
11 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
12 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

13 37. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
16 and provide legally required meal and rest periods, (c) failed to pay overtime wages and sick
17 pay wages, (d) failed to pay minimum wages, (e) failed to reimburse for required expenses, and
18 (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
19 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512,
20 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
21 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and thereby gives
22 rise to civil penalties as a result of such conduct.² PLAINTIFF hereby seeks recovery of only
23 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
24 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
25 the other AGGRIEVED EMPLOYEES.

26
27
28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 **PRAYER FOR RELIEF**

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

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

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

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

10
11 Dated: January 26, 2022 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

12
13
14 By: 

Norman B. Blumenthal

15 Attorneys for Plaintiff
16
17
18
19
20
21
22
23
24
25
26
27
28