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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

ANGELA THOMPSON and PENELOPE
PANKEY, on behalf of the State of
California, as private attorneys general,

Plaintiff,

vs.

FASTAFF, LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV395000

**FIRST AMENDED CONSOLIDATED
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), and the applicable Wage Order(s).

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1 Plaintiffs Angela Thompson and Penelope Pankey (“PLAINTIFFS”), on behalf of the
2 people of the State of California and as “aggrieved employees” acting as a private attorneys
3 general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”)
4 only, allege on information and belief, except for their own acts and knowledge which are based
5 on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendant Fastaff, LLC (referred to as
8 “DEFENDANT”) seeking only to recover PAGA civil penalties for themselves, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFFS
10 do **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFFS do not seek underlying general and/or special damages for those violations, but
13 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 him or herself and on behalf of others for PAGA penalties *only*, which is the precise
16 and sole nature of this action.

17 3. Accordingly, PLAINTIFFS seek 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 Fastaff, LLC (“DEFENDANT”) is a California Corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in the
25 state of California.

26 5. DEFENDANT provides travel and temporary nurses.

27 6. Plaintiff Thompson was employed by DEFENDANT in California from August
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1 of 2021 to October of 2021 as a “Registered Nurse” and was at all times classified by
2 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
3 required meal and rest periods and payment of minimum and overtime wages due for all time
4 worked. Plaintiff Thompson worked for DEFENDANT at Good Samaritan Hospital in Santa
5 Clara County.

6 7. Plaintiff Pankey was employed by DEFENDANT in California from September
7 of 2021 to December of 2021 as an “RN Tele Nurse” and was at all times classified by
8 DEFENDANT as a non-exempt employee position, paid on an hourly basis, and entitled to the
9 legally required meal and rest periods and payment of minimum and overtime wages due for all
10 time worked. Plaintiff Pankey worked for DEFENDANT at various locations, including Martin
11 Luther King Community Hospital in Los Angeles County and Riverside Community Hospital
12 in Riverside County.

13 8. PLAINTIFFS, 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, bring this Representative Action on behalf of the State of California with respect to
16 themselves and all individuals who are or previously were employed by DEFENDANT in
17 California and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during
18 the time period of October 22, 2020 until a date as determined by the Court (the “PAGA
19 PERIOD”).

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

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

9 10. 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 PLAINTIFFS 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**

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19 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
20 required to pay PLAINTIFFS 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. DEFENDANT required
23 PLAINTIFFS and other AGGRIEVED EMPLOYEES to work without paying them for all the
24 time they were under DEFENDANT's control. Among other things, DEFENDANT required
25 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
26 duty meal breaks. PLAINTIFFS were from time to time interrupted by work assignments while
27 clocked out for what should have been PLAINTIFFS' off-duty meal break. PLAINTIFFS and
28 other AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent

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

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

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

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

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

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

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

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

27 17. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
28 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed

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

18 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
19 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
20 wages are paid not more than seven (7) calendar days following the close of the payroll period.

21 Cal. Lab. Code § 210 provides:

22 [I]n addition to, and entirely independent and apart from, any other penalty provided in
23 this article, every person who fails to pay the wages of each employee as provided in
24 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
25 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.

26 19. DEFENDANT from time to time failed to pay PLAINTIFFS and other
27 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
28 accordance with Cal. Lab. Code § 204(d).

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

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

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

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

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

1 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable pay
2 period and upon termination.

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

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

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

28 **JURISDICTION AND VENUE**

1 Act, bring this Representative Action on behalf of the State of California with respect to
2 themselves and all individuals who are or previously were employed by DEFENDANT in
3 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
4 the time period of October 22, 2020 until a date as determined by the Court (the "PAGA
5 PERIOD").

6 33. On October 22, 2021, Plaintiff Thompson gave written notice by electronic mail
7 to the 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. See **Exhibit #1**, attached hereto and incorporated by this reference herein.
10 On October 18, 2022, PLAINTIFFS gave amended written notice by electronic mail to the
11 Agency and by certified mail to the employer, adding Plaintiff Pankey as an additional
12 aggrieved employee. See **Exhibit #2**, attached hereto and incorporated by this reference herein.
13 The statutory waiting period for PLAINTIFFS to pursue these allegations through the
14 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may pursue a
15 representative civil action under PAGA pursuant to Section 2699 as the proxies of the State of
16 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

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6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS pray 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 law,
14 including but not limited to, pursuant to Labor Code §2699.

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16 Dated: October 17, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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19 By: /s/ Kyle Nordrehaug
20 Kyle Nordrehaug
21 Attorneys for Plaintiff
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27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).