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

13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 LORRAINE WALTERS, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 TOTAL RENAL CARE, INC., a Corporation;
20 and DOES 1 through 50, inclusive,

21 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), and the applicable Wage Order(s).

BY FAX

1 Plaintiff Lorraine Walters (“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 Defendants Total Renal Care, Inc. (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **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 PLAINTIFF does 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 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 Total Renal Care, Inc. (“DEFENDANT”) is a 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 offers kidney and renal dialysis, transplant, disease management,
27 emergency care, insurance, and financial management support.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from April of 2018
2 to January 28, 2022 and was at all times classified by DEFENDANT as a non-exempt employee,
3 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
4 of minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by DEFENDANT in California and
9 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
10 of February 21, 2021 until a date as determined by the Court (the "PAGA PERIOD").

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

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

28 10. The agents, servants and/or employees of the Defendants and each of them acting

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

8 **THE CONDUCT**

9 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
10 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
11 meaning the time during which an employee is subject to the control of an employer, including
12 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
13 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are
14 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
15 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
16 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
17 should be PLAINTIFF's off-duty meal break. PLAINTIFF and the AGGRIEVED
18 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
19 testing or any other testing and/or examination required as a condition of employment.
20 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
21 practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED
22 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their
23 employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would
24 have been paid had they been paid for actual recorded time rather than "rounded" time.
25 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and the
26 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
27 condition of employment, required these employees to submit to mandatory temperature checks
28 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's

1 timekeeping system for the workday. As a result, PLAINTIFF and the other AGGRIEVED
2 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
3 by working without their time being correctly recorded and without compensation at the
4 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
6 records.

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

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

26 14. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
27 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
28 and were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED

1 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
2 for more than five (5) hours during some shifts without receiving a meal break. Further,
3 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
4 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
5 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
6 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
7 the other AGGRIEVED EMPLOYEES. PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance
9 with DEFENDANT's corporate policy and practice.

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

1 cannot leave the work premises during their rest period.

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

17 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
18 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
19 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
20 provides that every employer shall furnish each of his or her employees with an accurate
21 itemized wage statement in writing showing, among other things, gross wages earned and all
22 applicable hourly rates in effect during the pay period and the corresponding amount of time
23 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
24 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
25 the pay period and the total hours worked, and the applicable pay period in which the wages
26 were earned pursuant to California Labor Code Section 226(a). The wage statements
27 DEFENDANT provided to PLAINTIFF and the other AGGRIEVED EMPLOYEES failed to
28 identify such information. More specifically, the wage statements failed to identify the accurate

1 total hours worked each pay period. When the hours shown on the wage statements were added
2 up, they did not equal the actual total hours worked during the pay period. Aside, from the
3 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
4 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
5 As a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
6 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

7 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
8 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
9 wages are paid not more than seven (7) calendar days following the close of the payroll period.
10 Cal. Lab. Code § 210 provides:

11 [I]n addition to, and entirely independent and apart from, any other penalty provided in
12 this article, every person who fails to pay the wages of each employee as provided in
13 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
14 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.

15 19. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
16 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
17 Lab. Code § 204(d).

18 20. 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 the other AGGRIEVED EMPLOYEES at their base
23 rates of pay.

24 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
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 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at

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

6 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
7 the 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 the AGGRIEVED EMPLOYEES whose employment has separated are
11 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

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

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

1 the directions, believed them to be unlawful."

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

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

16 **JURISDICTION AND VENUE**

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

19 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
20 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
21 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
22 in this County and/or conducts substantial business in this County, and (ii) committed the
23 wrongful conduct herein alleged in this County against PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES.

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1 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
2 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 34. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
6 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
7 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse for required
8 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
9 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
10 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
11 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
12 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
13 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
14 Attorney General Act of 2004 as the representative of the State of California for the illegal
15 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
19 severally, as follows:

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

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

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

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

1 Dated: April 27, 2022

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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4 By:

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6 Norman B. Blumenthal
7 Nicholas J. De Blouw
8 Attorneys for Plaintiff
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