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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MAR 01 2023

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Attorneys for Shady D. Davis, on behalf of herself
and all others similarly situated and aggrieved**SUPERIOR COURT OF CALIFORNIA****COUNTY OF SAN BERNARDINO**SHADY D. DAVIS, on behalf of herself and
all others similarly situated and aggrieved,

Plaintiff,

v.

BEAR VALLEY COMMUNITY
HEALTHCARE DISTRICT, a California
health care district organized under Health
and Safety Code sections 32000, *et seq.*;
BEAR VALLEY COMMUNITY
HEALTHCARE DISTRICT d/b/a BEAR
VALLEY COMMUNITY HOSPITAL; and
DOES 1 Through 10, Inclusive,

Defendants.

Case No. **CIV SB 2305552****CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay Minimum Wages (Labor Code §§ 1194, 1194.2, 1197.1)
2. PAGA Civil Penalties for Failure to Pay Minimum Wages (Labor Code §§ 2698, *et seq.*)

DEMAND FOR JURY TRIAL

NATURE OF CLAIM

1
2 1. Plaintiff Shady D. Davis (“Plaintiff”) brings this proposed class action against
3 Bear Valley Community Healthcare District, a California health care district organized under
4 Health and Safety Code sections 32000, *et seq.*; Bear Valley Community Healthcare District
5 doing business as Bear Valley Community Hospital; and DOES 1 through 10, inclusive
6 (“Defendants”) on behalf of all non-exempt employees of Defendants (“aggrieved employees”) for Defendants’ failure to pay minimum wages, including due to rounding.

8 2. Plaintiff also brings this representative action under the Private Attorneys General
9 Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of herself and all other
10 aggrieved employees against Defendants for Defendants’ failure to pay minimum wages,
11 including due to rounding.

12 3. Plaintiff gave written notice of these claims to the California Labor and
13 Workforce Development Agency (“LWDA”) on November 22, 2022 (“the PAGA letter”) per
14 Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of this
15 notice. Plaintiff seeks civil penalties under the PAGA as a representative of the State of
16 California and has standing as an aggrieved employee. Plaintiff seeks to represent all
17 Defendants’ non-exempt employees in the State of California who suffered one or more of the
18 violations alleged (“aggrieved employees”) during the “PAGA Period” (from the date of the
19 filing of this complaint until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

20 4. On November 22, 2022, Plaintiff also gave written notice of these potential claims
21 to Defendants by serving on Defendants the PAGA letter, along with a catalyst letter and ESI
22 preservation notice, informing Defendants that Plaintiff intended to bring “class and
23 representative claims ... based on the company’s failure to pay at least minimum wages for all
24 hours worked under Labor Code sections 1194, 1194.2, and 1197.1, entitling employees to
25 recovery of unpaid wages and liquidated damages.”

26 5. On January 11, 2023, Bear Valley Community Healthcare District sent Plaintiff
27 a “Notice of Rejection of Claim” informing Plaintiff that the claim she presented was rejected
28 “by Board action” and that she “had only six (6) months from the date of this notice was

1 personally delivered or deposited in the mail to file a State Court action on this claim. See
2 Government Code Section 945.6.” Plaintiff received the notice on January 17, 2023. This lawsuit
3 follows.

4 **PARTIES**

5 6. Plaintiff is a resident of Big Bear City, which is located within San Bernardino
6 County, California. Plaintiff worked for Defendants as an hourly non-exempt laboratory assistant
7 from February 10, 2020 through November 29, 2021.

8 7. Defendant Bear Valley Community Healthcare District is a California health care
9 district organized under Health and Safety Code sections 32000, *et seq.* which does business as
10 Bear Valley Community Hospital.

11 8. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who
13 sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is
14 informed and believes, and alleges, each DOE Defendant is legally responsible in some manner
15 for the unlawful acts alleged. Plaintiff will seek leave to amend this Complaint to reflect the true
16 names and capacities of DOE Defendants when they become known.

17 9. Plaintiff is informed and believes, and alleges, each Defendant acted in all
18 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
19 plan or policy, and the acts of each Defendant are legally attributable to the other Defendants.

20 **JURISDICTION AND VENUE**

21 10. Venue as to each Defendant is proper in this judicial district. Code of Civil
22 Procedure § 395. Defendants conduct business in San Bernardino County and each Defendant is
23 within this Court’s jurisdiction for service of process. The unlawful acts alleged directly affect
24 Plaintiff and similarly-situated and aggrieved employees within San Bernardino County and
25 California. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the
26 issues are based solely on California law, including the Labor Code, Business and Professions
27 Code, and the Code of Civil Procedure.

28 ///

11. No federal question is raised and the Class Action Fairness Act (“CAFA”), 28 U.S.C. section 1332(d), does not apply, or in the alternative, local case or controversy exceptions apply and prohibit removal of this action. Based on her rate of pay, Plaintiff’s individual claims do not meet the amount in controversy to implicate traditional diversity jurisdiction.

12. Further, as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d) as PAGA civil penalty actions are not subject to federal jurisdiction.

CLASS ACTION ALLEGATIONS

13. Plaintiff seeks to represent a Class of all non-exempt employees employed by Defendants in California from four years before this Complaint filing date. Plaintiff also seeks to certify a “Rounding Subclass” for “Class Members who had their time worked rounded by Defendants for pay purposes” and an “Off-the-Clock Subclass” for “Class Members who worked any amount of time for which they were not compensated by Defendants.”

14. Plaintiff reserves the right to amend or modify the Class description, including by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

15. **Commonality**: This action may be maintained as a class action because there is a well-defined common interest of many persons and it is impractical to bring them all before the court. Code of Civil Procedure § 382.

16. **Ascertainable Class**: The proposed Class is ascertainable because its members can be identified and located using Defendants’ payroll and personnel records.

17. **Numerosity**: The potential Class Members are so numerous, joining them would be impractical. The disposition of their claims through a class action will benefit the parties and this Court. The number of potential Class Members is unknown to Plaintiff, but is estimated to be more than 100 individuals.

18. **Typicality**: Plaintiff’s claims are typical of the potential Class Members’ claims because Plaintiff and potential Class Members sustained similar injuries and damages caused by Defendants’ common course of conduct in violation of law.

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1 19. **Adequacy**: Plaintiff is an adequate Class representative, will fairly protect the
2 interests of potential Class Members, has no interests antagonistic to them, and will vigorously
3 pursue this suit. Plaintiff's attorneys are competent, skilled, and experienced in litigating large
4 employment law class actions.

5 20. **Superiority**: A class action is superior to other available means for the fair and
6 efficient adjudication of this controversy. Individual joinder of all Class Members is not
7 practicable, and questions of law and fact common to the Class predominate over questions
8 affecting only individual Class Members. A class action will allow those similarly situated to
9 litigate their claims in the most efficient and economical manner for the parties and the judicial
10 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of
11 this action that precludes its maintenance as a class action.

12 21. **Predominance**: The predominating common factual question is whether
13 Defendants rounded potential Class Members' time worked when paying them. The
14 predominating common legal question is whether this policy violates California law.

15 **FACTUAL ALLEGATIONS**

16 22. During the relevant statutory periods, Defendants employed Plaintiff and other
17 similarly-situated and aggrieved employees ("other employees") in California.

18 23. During the relevant statutory periods, Plaintiff and other employees recorded time
19 worked electronically using ADP software furnished by Defendants. Defendants rounded
20 Plaintiff's and other employees' clock-in and out entries to the nearest quarter hour. Plaintiff and
21 other employees were also required to work and answer phone calls off-the-clock, post-shift
22 without pay. For example, after clocking out, Plaintiff, on a daily basis, was required to take out
23 the trash and received phone calls from her supervisor.

24 **FIRST CAUSE OF ACTION**

25 **Failure to Pay Minimum Wages—Labor Code §§ 1194, 1194.2, 1197.1** 26 **(By Plaintiff and each Rounding and Off-the-Clock Subclass Member)**

27 24. Plaintiff incorporates the preceding paragraphs of this Complaint.

28 25. By rounding time worked and by failing to pay for time worked off-the-clock,
Defendants failed to pay minimum wages in violation of Labor Code section 1194.

26. Defendants' unlawful acts deprived Plaintiff and members of the Rounding and Off-the-Clock Subclasses of minimum wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with liquidated damages under Section 1194.2, penalties under Section 1197.1, interest, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Pay Minimum Wages— Labor Code §§ 2698, *et seq.*
(By Plaintiff and Aggrieved Employees against Each Defendant)**

27. Plaintiff incorporates the preceding paragraphs of this Complaint.

28. "[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Labor Code § 2699(a).

29. "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." Labor Code § 2699(f)(2).

30. Section 2699.3(a) applies to any alleged violation of Labor Code sections 1194 and 1197.1 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

31. By rounding time worked and by failing to pay for time worked off-the-clock, Defendants failed to pay minimum wages, entitling Plaintiff and aggrieved employees to civil penalties under the PAGA premised on violations of Labor Code sections 1194 and 1197.1.

32. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

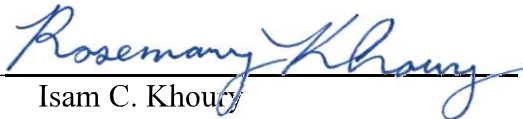
PRAYER FOR RELIEF

Plaintiff prays for the following relief on behalf of herself, the Class, and other aggrieved employees:

- A. For certification of this action as a class action;
- B. For appointment of Plaintiff as Class representative and of Plaintiff's counsel as Class Counsel;
- C. For compensatory damages for violations alleged in amounts according to proof;
- D. For all interest accrued;
- E. That this action be maintained as a PAGA Representative Action, and Plaintiff and her counsel be provided with enforcement capability as if the action were brought by the DLSE;
- F. For recovery of all civil penalties as permitted by Labor Code section 2699, for unpaid minimum wages owed pursuant to Labor Code section 1194;
- G. For all civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, pursuant to Labor Code section 2699(i);
- H. For Plaintiff to be recognized as a Representative of the LWDA and an "aggrieved employee," and that she be awarded enhanced compensation for bringing this action should she prevail and provide benefit to California or other "aggrieved employees";
- I. For reasonable attorneys' fees and costs pursuant to statute, the PAGA, and Code of Civil Procedure section 1021.5; and
- J. For such other relief the Court deems just and proper.

COHELAN KHOURY & SINGER

Dated: February 28, 2023

By: 

Isam C. Khoury

Michael D. Singer

Rosemary C. Khoury

Attorneys for Plaintiff Shady D. Davis, on behalf of herself and all others similarly situated and aggrieved

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

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