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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KYANA RAMPLEY, individually and
on behalf of all employees similarly
situated,

Plaintiff,

v.

BEAR VALLEY COMMUNITY
HEALTHCARE DISTRICT, and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 5:21-cv-01270-SPG-SHKx

**FIRST AMENDED CLASS
ACTION COMPLAINT FOR
DAMAGES**

1. Failure to Pay Overtime Compensation in Violation of the Fair Labor Standards Act (29 U.S.C. §§ 201, *et seq.*) and Labor Code §§ 510 and 1194;
2. Failure to Pay Minimum Wage in Violation of the Fair Labor Standards Act (29 U.S.C. §§ 201, *et seq.*) and Labor Code §§ 510 and 1194; and
3. Violation of the Private Attorneys General Act.

DEMAND FOR JURY TRIAL

1 Plaintiff KYANA RAMPLEY (hereinafter “Plaintiff”), individually and on
2 behalf of all other similarly situated hourly non-exempt employees, hereby
3 complains against Defendant BEAR VALLEY COMMUNITY HEALTHCARE
4 DISTRICT, and DOES 1-10, inclusive (hereinafter referred to as “Defendant”), and
5 on information and belief alleges as follows:

6 **PRELIMINARY STATEMENT**

7 1. This is a collective and class action brought on behalf of Plaintiff and
8 the class she seeks to represent ("Plaintiff Class"), against Defendant. Plaintiff and
9 Plaintiff Class allege that Defendant routinely violated the Fair Labor Standards Act
10 (“FLSA”), the California Labor Code and Industrial Welfare Commission (IWC)
11 Wage Orders.

12 2. Plaintiff brings this action on behalf of the Plaintiff Class, which
13 consists of all non-exempt employees of Defendant, who were not fully
14 compensated for all work performed by Defendant, in the three-year period
15 preceding the filing of Plaintiff’s initial complaint filed July 29, 2021, through entry
16 of judgment (the “Relevant Time Period.”) Plaintiff seeks recovery of damages for
17 Defendant’s failure to pay minimum and overtime wages pursuant to the FLSA, 29
18 U.S.C. sections 206, 207, and 216, and 29 C.F.R. section 778.315 and Labor Code
19 sections 201, 202, 203, 204, 226(a), 558, 558.1, 1174(d), 1194, 1194.2, 1197.1 and
20 2699 et seq.

21 **JURISDICTION AND VENUE**

22 3. Title 28 of the United States Code, section 1331, grants federal district
23 courts original jurisdiction “of all civil actions arising under the Constitution, laws,
24 or treaties of the United States.” This action is brought pursuant to rights granted
25 under the FLSA, Title 29 of the United States Code, section 201, *et seq.* This Court
26 accordingly has subject matter jurisdiction pursuant to Plaintiff’s assertion of rights
27 arising under the laws of the United States.

28 4. Title 29 of the United States Code, section 1391, subdivision (b),

1 allows a Plaintiff to lay venue in “a judicial district in which any defendant resides,
2 if all defendants are residents of the State in which the district is located...” *Id.*
3 Defendant is a resident of the State of California, and the County resides within the
4 Central District of California. Accordingly, venue within the Central District is
5 proper as to Defendant.

6 **PAGA ADMINISTRATIVE PREREQUISITE**

7 5. Plaintiff brings this case as a representative action seeking penalties
8 for the State of California in a representative capacity, as provided by the Private
9 Attorney General Act, Labor Code section 2698 et seq. (“PAGA”), as an aggrieved
10 employee was employed by Defendant and did not receive all wages due, was not
11 paid minimum and overtime wages.

12 6. Plaintiff gave written notice by certified electronic mail to the Labor
13 and Workforce Development Agency (“LWDA”) and to Defendant of the specified
14 provisions alleged to have been violated, including the facts and theories to support
15 the alleged violation as required by Labor Code section 2699.3. A true and correct
16 copy of Plaintiff’s original letter sent to the LWDA is attached hereto as “Exhibit
17 A.”

18 **THE PARTIES**

19 **A. The Plaintiff**

20 7. Plaintiff is an individual over the age of eighteen (18). At all relevant
21 times herein, Plaintiff was, and currently is, a California resident. Plaintiff was
22 employed by Defendant to perform duties at Bear Valley Community Hospital in
23 the city of Big Bear Lake, California. Plaintiff performed duties at Bear Valley
24 Community Hospital from on or about October 2017, through March 2021. At all
25 relevant times herein, Plaintiff was employed by Defendant in a non-exempt hourly
26 position as phlebotomist.

27 8. Each member of the Plaintiff Class is an identifiable, current and/or
28 former similarly-situated person employed by Defendant as a non-exempt

employee during the Relevant Time Period.

B. The Defendants

9. Defendant BEAR VALLEY COMMUNITY HEALTHCARE DISTRICT (“Defendant” or “Bear Valley”) is and/or was the employer of Plaintiff and the Plaintiff Class. At the time of Plaintiff’s employment, Bear Valley was and is a public entity, with offices in Big Bear Lake, California.

10. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 10, inclusive, but on information and belief allege that said Defendants are legally responsible for the payment of regular and overtime compensation to the Plaintiff by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

11. Defendants operate as a joint venture and/or single business enterprise, and are agents of one another, are alter egos, joint employers and conspire with one another to increase profits by engaging in the conduct described in this complaint.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff.

13. Plaintiff is informed and believe, and based thereon allege, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission

1 and consent of the co-Defendants. Plaintiff also allege the acts of each Defendant
2 are legally attributable to the other Defendants.

3 14. Plaintiff is informed and believes, and based thereon allege, that each
4 of the Defendants sued herein was, at all relevant times hereto, the employer, owner,
5 shareholder, principal, joint venture, proxy, agent, employee, supervisor,
6 representative, manager, managing agent, joint employer and/or alter-ego of the
7 remaining Defendant, and was acting, at least in part, within the course and scope
8 of such employment and agency, with the express and implied permission, consent
9 and knowledge, approval and/or ratification of the other Defendant. The above co-
10 Defendant, managing agents, and supervisors aided, abetted, condoned, permitted,
11 approved, authorized and/or ratified the unlawful acts described herein.

12 **STATEMENT OF FACTS**

13 15. During all, or a portion of the Relevant Time Period, Defendant,
14 jointly, were Plaintiff and the Plaintiff Class' "employer" within the meaning of the
15 FLSA, section 203, subdivision (d). Defendant exercised control over the manner
16 of Plaintiff and the Plaintiff Class' employment by specifying the hours Plaintiff
17 and the Plaintiff Class were permitted to work, and determining whether or not
18 minimum and overtime wages would be paid.

19 16. Throughout Plaintiff's employment with Defendant, Plaintiff was paid
20 on an hourly basis and entitled to minimum wage, certain non-discretionary
21 bonuses, overtime pay, and shift differentials.

22 17. The FLSA provides that all hours worked in a week in excess of forty
23 (40) in one week are considered overtime hours. (29 CFR § 778.101.) Under the
24 FLSA, "overtime must be compensated at a rate not less than one and one-half times
25 the regular rate at which the employee is actually employed." (29 CFR § 778.107.)

26 18. During the Relevant Time Period, Defendant suffered and permitted
27 Plaintiff and the Plaintiff Class to work more than forty (40) hours per work week.
28 Thus, all unpaid wages described herein should have been compensated not simply

1 at Plaintiff's regular rate of pay, but at one and one-half times per the FLSA with
2 all remuneration earned by Plaintiff and the Plaintiff Class during the Relevant
3 Time Period.

4 19. Plaintiff alleges that from time-to-time during the Relevant Time
5 Period, Plaintiff and the Plaintiff Class earned non-discretionary bonuses and shift
6 differential pay and worked overtime compensation for Defendant. Plaintiff alleges
7 that Defendant failed to accurately calculate the non-discretionary bonuses and
8 other shift differential pay into the regular rate of pay for Plaintiff's and Plaintiff
9 Class' overtime compensation. Defendant's failure to do so has resulted in an
10 underpayment of overtime compensation to Plaintiff and Plaintiff Class during the
11 Relevant Time Period.

12 20. As evidenced in Plaintiff's wage statements, Defendant did not include
13 all remuneration in Plaintiff's regular rate when calculating Plaintiff's overtime
14 compensation. For example, during the pay period beginning on December 20, 2020
15 and ending on January 2, 2021, Defendant paid Plaintiff the following wages at the
16 below rates:

- 17 • "Regular": 60 hours at \$22.58 per hour;
- 18 • "Overtime": 12.75 hours at \$33.87 per hour;
- 19 • "Double Time": 2.50 hours at \$45.16 per hour;
- 20 • "Covid 5": 87 hours at \$5.00 per hour;
- 21 • "Worked Holiday": 11.75 hours at \$33.8698 per hour; and
- 22 • "2nd Shift Diff": 85.25 hours at \$1.28 per hour.

23 21. Accordingly, Defendant calculated Plaintiff's "Overtime" rate by only
24 paying Plaintiff's one and one-half times Plaintiff's regular rate of \$22.58.
25 Defendant failed to include Plaintiff's shift differential pay or "Covid 5" in the
26 calculation of Plaintiff's regular rate for overtime compensation.

27 22. In addition, Defendant's failure to include all remuneration in
28 Plaintiff's and Class Members' regular rate when calculating is further evidenced

1 in Plaintiff's Earnings Statement Pay Date of August 10, 2018. Defendant failed to
2 include Plaintiff's fifty dollar (\$50.00) non-discretionary bonus in her regular rate
3 for the purposes of calculating her overtime rate. Defendant only paid Plaintiff one
4 and one-half times her regular rate. As such, Defendant failed to properly
5 compensation Plaintiff all overtime wages for this pay period.

6 23. Plaintiff alleges Defendant has a uniform policy and practice of failing
7 to properly pay Plaintiff and Plaintiff Class one and one-half times their regular rate
8 in violation of the FLSA and the Labor Code.

9 24. Plaintiff alleges that Defendant was aware of Plaintiff and the Plaintiff
10 Class' actual remuneration earned by virtue of the wage statements provided by
11 Defendant and each form of compensation earned by Plaintiff and the Plaintiff Class
12 each pay period. Plaintiff therefore alleges that Defendant willfully violated the
13 FLSA and Labor Code by failing to compensate Plaintiff and the Plaintiff Class
14 both at the appropriate overtime rate specified by the FLSA and Labor Code for all
15 hours worked in excess of forty (40) per week.

16 25. Plaintiff further alleges Defendant failed to properly compensate
17 Plaintiff and Plaintiff Class for time spent under Defendant's control when
18 Defendant required Plaintiff and Plaintiff Class to remain on-call without legally
19 required compensation. As such, Plaintiff and Plaintiff Class were not properly paid
20 for all wages, including minimum wages and overtime wages as required by the
21 California Labor Code.

22 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

23 26. Plaintiff brings this action on behalf of herself and other similarly
24 situated employees as authorized under the FLSA. (29 USC § 216, subd. (b).)
25 Plaintiff has provided a consent form to be a party plaintiff to this action, attached
26 hereto as Exhibit B. Plaintiff and the Plaintiff Class are similarly situated because
27 they have substantially similar job requirements and pay provisions, and are subject
28 to Defendant's common practice, policy and/or plan of willfully and intentionally

1 refusing to pay minimum wage and overtime in violation of the FLSA and for
2 willfully and intentionally failing to pay for all hours worked. Therefore, Plaintiff's
3 claims under FLSA are similar to the claims of the prospective Plaintiff Class.

4 27. 29 U.S.C. section 207 provides that overtime is to be paid at one and
5 one-half times the employee's regular rate of pay.

6 28. 29 C.F.R. section 778.315 states:

7 *In determining the number of hours for which overtime compensation*
8 *is due, all hours worked (see section 778.223) by an employee for an*
9 *employer in a particular workweek must be counted. Overtime*
10 *compensation, at a rate not less than one and one-half times the regular*
11 *rate of pay, must be paid for each hour worked in the workweek in*
12 *excess of the applicable maximum hours standard. **This extra***
13 *compensation for the excess hours of overtime work under the Act*
14 *cannot be said to have been paid to an employee unless all the*
15 *straight time compensation due him for the nonovertime hours*
16 *under his contract (express or implied) or under any applicable*
17 *statute **has been paid.*** (29 C.F.R. section 778.315) (emphasis added.)

18 29. 29 C.F.R. section 778.316 states:

19 ...Since a lower rate cannot lawfully be set for overtime hours it is
20 obvious that the parties cannot lawfully agree that the working time
21 will not be paid for at all. An agreement that only the first 8 hours of
22 work on any days or only the hours worked between certain fixed
23 hours of the day or only the first 40 hours of any week will be counted
24 as working time will clearly fail of its evasive purpose.... (see 29
25 C.F.R. section 778.316.)

26 30. 29 C.F.R. section 778.317 states "An agreement not to compensate
27 employees for certain nonovertime hours stands on no better footing since it would
28

1 have the same effect of diminishing the employee's total overtime compensation.”
2 (see 29 C.F.R. section 778.317.)

3 31. The proposed Plaintiff Class is defined as follows:

4 All current and former non-exempt employees of Defendant who were
5 not fully compensated for all work performed by Defendant, in the
6 three-year period preceding the filing of this complaint, through entry
7 of judgment.

8 32. Plaintiff reserves the right to amend the proposed Plaintiff Class
9 description with greater specificity or division into subclasses or limitation to
10 particular issues.

11 33. Plaintiff and the proposed Plaintiff Class were and/or are hourly non-
12 exempt employees who were employed under an express and implied contract to
13 receive compensation for all time worked.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME WAGES**

16 **(Plaintiff and all similarly situated employees against all Defendants)**

17 34. Plaintiff incorporates by reference the above paragraphs as though
18 fully alleged herein.

19 35. This claim is brought pursuant to 29 U.S.C. section 20 and Labor Code
20 section 510, which requires an employer to pay employees the federally mandated
21 overtime premium rate of one and a half times their regular rate of pay for every
22 hour worked in excess of forty (40) hours per workweek.

23 36. 29 U.S.C., section 216 provides that "[a]ny employer who violates the
24 provisions of Section 206 or 207 of this Title shall be liable to the employee or
25 employees affected in the amount of their unpaid minimum wages, or their unpaid
26 overtime compensation, as the case may be, and in an additional equal amount as
27 liquidated damages."

28 37. 29 C.F.R. section 778.315 states:

1 In determining the number of hours for which overtime compensation
2 is due, all hours worked (see section 778.223) by an employee for an
3 employer in a particular workweek must be counted. Overtime
4 compensation, at a rate not less than one and one-half times the regular
5 rate of pay, must be paid for each hour worked in the workweek in
6 excess of the applicable maximum hours standard. This extra
7 compensation for the excess hours of overtime work under the Act
8 cannot be said to have been paid to an employee unless all the straight
9 time compensation due him for the non-overtime hours under his
10 contract (express or implied) or under any applicable statute has been
11 paid. (29 C.F.R. section 778.315) (emphasis added.)

12 38. 29 C.F.R. section 778.316 states:

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14 obvious that the parties cannot lawfully agree that the working time
15 will not be paid for at all. An agreement that only the first 8 hours of
16 work on any days or only the hours worked between certain fixed
17 hours of the day or only the first 40 hours of any week will be counted
18 as working time will clearly fail of its evasive purpose.... (see 29
19 C.F.R. section 778.316)

20 39. 29 C.F.R. section 778.317 states "An agreement not to compensate
21 employees for certain nonovertime hours stands on no better footing since it would
22 have the same effect of diminishing the employee's total overtime compensation."
23 (see 29 C.F.R. section 778.317)

24 40. Plaintiff and the Plaintiff Collective Class worked more than forty (40)
25 hours per week, without being paid the proper overtime pay as required by the
26 FLSA. Pursuant to Labor Code section 510, Plaintiff and Plaintiff Class members
27 seek the payment of all compensation which they earned and accrued three (3) years
28 prior to filing of the initial complaint, according to proof.

1 41. Neither Defendant and Plaintiff, nor Defendant and any member of the
2 Plaintiff Class, entered into any agreement, express or implied, pertaining to the
3 payment or non-payment of overtime compensation.

4 42. Defendant's policies and practices alleged herein violate the FLSA's
5 overtime compensation requirements including, but not limited to, 29 U.S.C.
6 sections 206, 207 and 29 C.F.R. section 778.315.

7 43. Defendant's policies and practices, as alleged herein, constitute a
8 willful violation of the FLSA, within the meaning of 29 U.S.C. section 255.
9 Defendant knew that its conduct violated the FLSA, or showed reckless disregard
10 as to whether its conduct violated the FLSA.

11 44. As alleged above, Defendant failed to accurately include non-
12 discretionary bonus compensation and other shift differential pay as part of
13 Plaintiff's and Plaintiff Class' regular rate of pay when calculating their overtime
14 compensation.

15 45. The foregoing conduct, as alleged, constitutes a willful violation of the
16 FLSA and Labor Code.

17 46. During the Relevant Time Period, Defendant suffered and permitted
18 Plaintiff and the Plaintiff Class to work more than forty (40) hours per work week.
19 Thus, all unpaid wages described herein should have been compensated not simply
20 at Plaintiff's regular rate of pay, but in fact at one and one-half times per the FLSA.

21 47. Plaintiff, on behalf of herself and the Plaintiff Class, seeks damages in
22 the amount of all unpaid overtime compensation owed to herself and the Plaintiff
23 Class, liquidated damages as provided by the FLSA and Labor Code, interest, and
24 such other legal and equitable relief as the Court deems just and proper. (29 USC §
25 216, subd. (b).) Additionally, Plaintiff and Plaintiff Class members is entitled to
26 attorneys' fees and costs, pursuant to California Labor Code section 1194 and
27 prejudgment interest.
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hereto as Exhibit A.

55. Pursuant to Labor Code section 2699, subdivision (l)(1), Plaintiff will within ten days of the filing of this complaint, provide the LWDA with a file-stamped copy of this complaint.

56. PAGA permits an “aggrieved employee” to recover penalties on behalf of himself/herself and other employees subject to violations of the Labor Code.

57. Section 2699, subdivision (f) of the Labor Code provides for civil penalties for violations of the California Labor Code, for which a specific civil penalty is not provided, which here includes, *inter alia*, sections 201, 202, 203, 204, 226, subdivision (a), 226, 510, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, and 1197.1, and the applicable Wage Order.

58. Plaintiff is informed and believes Defendant at all relevant times employed one or more employees.

59. For those code sections that provide for the recovery of civil penalties, Plaintiff will seek on behalf of all Plaintiff Class that worked during the PAGA Period (1 year and 65 days prior to Plaintiff’s notice to the LWDA) those penalties. For those sections of the Labor Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each Plaintiff Class per pay period during the PAGA Period for each subsequent violation pursuant to Labor Code section 2699, subdivision (f). The “initial violation” occurs during the first pay period following notice of such violations served on Defendant through the letter to the LWDA.

60. Section 2699, subdivision (a) provides that civil penalties may be “recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g) provides that an employee who prevails in a civil action under section 2699 shall be entitled to an award of reasonable

attorneys' fees and costs.

61. The State of California, Plaintiff and Plaintiff Class are, therefore, entitled to civil penalties, attorneys' fees and costs, according to proof.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

1. For nominal damages;
2. For compensatory damages;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;
5. For restitution of all monies due to Plaintiff and the Plaintiff Class, and disgorged profits from the unlawful business practices of Defendant;
6. For liquidated damages;
7. For interest accrued to date;
8. For injunctive relief, enjoining Defendant from further engaging in the unlawful and unfair business practices complained herein;
9. For declaratory relief, declaring the amounts of damages, penalties, equitable relief, costs, and attorneys' fees to which Plaintiff and the Plaintiff Class are entitled;
10. For costs of suit and expenses incurred herein pursuant to the FLSA, Title 29 of the United States Code, section 216, subdivision (b);
11. For reasonable attorney's fees pursuant to the FLSA, Title 29 of the United States Code, section 216, subdivision (b); and

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1 12. For all such other and further relief as the Court may deem just and
2 proper.

3 Dated: January 20, 2023

MAHONEY LAW GROUP, APC

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6 Kevin Mahoney
7 John A. Young
8 Attorneys for Plaintiff Kyana Rampley,
9 individually and on behalf of all employees
10 similarly situated.
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff KYANA RAMPLEY hereby demands a jury trial on all issues so
3 triable.

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5 Dated: January 20, 2023

MAHONEY LAW GROUP, APC

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7  _____

8 Kevin Mahoney
9 John A. Young
10 Attorneys for Plaintiff Kyana Rampley,
11 individually and on behalf of all employees
12 similarly situated.
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