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Superior Court of California,
County of Alameda

04/10/2023 at 11:39:43 AM

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

TONIA DANIELS, on behalf of the State of
California, as a private attorney general,

Plaintiff,

v.

PENUMBRA, INC., a California Corporation;
and DOES 1-50, inclusive.

Defendants.

CASE NO.: **23CV030886**

**REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

DEMAND FOR JURY TRIAL

1 Plaintiff Tonia Daniels (“Plaintiff”) on behalf of the State of California hereby brings this
2 PAGA Representative Action Complaint (“Complaint”) against Defendant Penumbra, Inc.
3 (“Defendant”) and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Penumbra, Inc., is a global healthcare company focused on innovative
6 therapies that address challenging medical conditions and significant clinical needs. Plaintiff brings
7 this PAGA representative action solely on behalf of the State of California against Defendants for
8 alleged violations of the California Labor Code.

9 2. As set forth below, Plaintiff alleges that Defendants pay policies/procedures failed to
10 pay Plaintiff and other aggrieved employees at the appropriate legal rate for all overtime hours
11 worked. Plaintiff further alleges that Defendants failed to pay all sick days at the legal “regular rate
12 of pay,” and pay all vacation at the correct final rate.

13 3. Moreover, Plaintiff alleges that aggrieved employees were not always allowed and
14 permitted to take all legally complaint meal and rest periods and were not paid premium pay at the
15 “regular rate of pay” for non-complaint meal or rest periods.

16 4. Finally, Plaintiff alleges that Defendants failed to provide aggrieved employees with
17 accurate written itemized wage statements and failed to timely pay all final wages upon separation of
18 employment.

19 **JURISDICTION**

20 5. This is a representative action brought pursuant to Labor Code § 2698 *et. seq.* on
21 behalf of the State of California and the group of aggrieved employees defined as follows: “All
22 individuals who are or were employed as hourly, non-exempt, employees by Defendants, or their
23 predecessors or merged entities, in the State of California from February 10, 2022, and continuing to
24 the present (“aggrieved employees).”

25 6. Plaintiff, of behalf of the State of California brings this representative action pursuant
26 to Labor Code § 2699, *et seq.* seeking penalties for Defendants’ violation of California Labor Code
27 §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194,
28 1199, and all applicable IWC Wage Orders.

7. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2699, *et seq.*

8. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the State of California so as to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

4. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Alameda. Defendants own, maintain offices, transact business, have an agent or agents within the County of Alameda, and/or otherwise are found within the County of Alameda, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

9. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California.

10. Plaintiff is informed and believes and thereon alleges that Defendant Penumbra, Inc., is a California corporation authorized to and doing business in California and is and/or was the legal employer of Plaintiff and the aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, and applicable Wage Orders.

11. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Alameda.

12. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to

1 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
2 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
3 corporate, were responsible in some manner for the acts and omissions alleged herein, and
4 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
5 practices alleged herein.

6 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
7 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times
8 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
9 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
10 the agents, servants, and employees of each and every one of the other Defendants, as well as the
11 agents of all Defendants, and at all times herein mentioned were acting within the course and scope
12 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
13 otherwise ratified each and every one of the acts or omissions complained of herein.

14 14. At all times mentioned herein, Defendants, and each of them, were members of and
15 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
16 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
17 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
18 employees.

19 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

20 15. Defendants are a global healthcare company focused on innovative therapies that
21 address challenging medical conditions and significant clinical needs.

22 16. Plaintiff started working for Defendants on or about March 26, 2022, as a non-exempt
23 employee with the title of “Production Builder” out of its Roseville, California location. Plaintiff and
24 other aggrieved employees (including, but not limited to equipment technicians, associates,
25 assemblers, quality control inspectors, etc.) were responsible for all aspects of its business in the state
26 of California. However, in these roles Plaintiff and other aggrieved employees were often not afforded
27 all protections and rights conferred under the California Labor Code and applicable Wage Orders.
28

1 17. First, at all relevant times, Plaintiff and other aggrieved employees were not properly
2 paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or
3 forty (40) hours per workweek. While Plaintiff and other aggrieved employees regularly worked
4 overtime hours, they were not compensated at one and one-half times their “regular rate of pay”
5 because Defendants failed to include all forms of compensation, including but not limited to, shift
6 differential pay, incentive pay, non-discretionary bonuses, commission, and other forms of
7 remuneration when calculating the “regular rate of pay” used in payment of overtime wages.

8 18. Under the California Labor Code (as well as the FLSA), courts have consistently held
9 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
10 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
11 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
12 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
13 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
14 California and federal law on the grounds, that Defendant improperly calculated overtime by
15 excluding annual bonuses paid to employees from the “regular rate of compensation”].)

16 19. Labor Code § 510 requires an employer to compensate an employee who works more
17 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
18 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
19 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
20 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
21 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
22 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
23 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
24 (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.

25 20. By their policy of requiring Plaintiff and the other aggrieved employees to work in
26 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
27 them at the lawful rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the
28 provisions of Labor Code § 510 and the applicable Wage Orders.

1 21. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other
2 aggrieved employees are entitled to recover penalties under Labor Code § 2698 *et seq.*

3 22. Next, at all relevant times, Defendants also failed in its obligation to provide Plaintiff
4 and other aggrieved employees the legally required paid sick days at the “regular rate of pay” pursuant
5 to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works
6 in California for the same employer for 30 or more days within a year from the commencement of
7 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
8 worked, beginning at the commencement of employment.”

9 23. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must
10 be “calculated in the same manner as the regular rate of pay for the workweek in which the employee
11 uses paid sick time, whether or not the employee actually works overtime in that workweek.”

12 24. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
13 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
14 hours worked in the full pay periods of the prior 90 days of employment.”

15 25. Finally, Labor Code §246(i) requires employers to “provide an employee with written
16 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
17 provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in
18 Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
19 of wages.”

20 26. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
21 other aggrieved employees the legally required paid sick days at the “regular rate of pay,” including
22 all forms of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants paid sick time
23 below his base rate of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l)(1-
24 2). Based on the foregoing Labor Code violations, Plaintiff seeks all civil and statutory penalties
25 available and applicable under Labor Code § 2699(f)(2), and for attorneys’ fees and costs pursuant
26 to Labor Code § 2699(g)(1).

27 27. Moreover, at all relevant times, the Defendants utilized a policy and practice through
28 which Plaintiff and other aggrieved employees accrued vacation time and/or Paid Time Off (“PTO”)

1 hours. However, on the occasions when Plaintiff and other aggrieved employees had accrued but
2 unused vacation hours or other PTO upon separation of employment, Defendants failed to pay for
3 these earned wages and, further, failed to pay for vested and unused vacation time and PTO at the
4 “final rate of pay” as required by Labor Code § 227.3. Based on the foregoing Labor Code violations,
5 Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §
6 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

7 28. Furthermore, at all relevant times, the aggrieved employees were denied compliant
8 and timely 30-minute off-duty meal periods as mandated by California law. As a result of Defendants’
9 uniform meal period policies/practices and work demands, aggrieved employees were often unable
10 to take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour of work.
11 Further, when other aggrieved employees worked in excess of 10.0 hours in a shift, they were not
12 allowed and permitted to take a mandated 30-minute net second meal period before the end of the
13 tenth hour of work in violation of the Labor Code and applicable Wage Orders. Specifically, based
14 on information and belief, Defendants would often modify Plaintiff and other aggrieved employees’
15 time entries to reflect that a complaint meal period was taken, but in reality, Plaintiff and other
16 aggrieved employees were often not afforded their timely and off-duty meal periods as mandated by
17 California law.

18 29. Additionally, Plaintiff and other aggrieved employees were not properly paid meal
19 period premiums for missed or non-compliant meal periods at the “regular rate of pay” pursuant to
20 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858.

21 30. Accordingly, due to Defendants’ uniform meal period policies/practices, aggrieved
22 employees were regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7,
23 510, 516, and applicable Wage Orders, and are entitled to penalties under Labor Code § 2698 *et seq.*

24 31. Moreover, at all relevant times, aggrieved employees were also not provided with all
25 uninterrupted 10-minute rest periods for every four hours worked, or major fraction thereof due to
26 Defendants’ uniform rest period policies/practices and work demands. As a result, aggrieved
27 employees were and are often unable to take a net 10-minute duty free rest periods for every major
28 fraction of four hours worked. This includes a second rest period for shifts in excess of six hours, and

1 a third rest period for shifts in excess of 10 hours in a workday. Moreover, Defendants had a rest
2 break policy which required that aggrieved employees remain on premises during rest periods.
3 Despite Defendants' claim that all employees are relieved of all duties during their rest breaks,
4 Defendants still exerted control over aggrieved employees by requiring them to remain on premises
5 during rest periods and to obtain permission before even taking a rest break, if at all.

6 32. By not relieving all non-exempt employees of all duties during rest periods,
7 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
8 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve
9 employees of all duties and relinquish control over how employees spend their time."] (emphasis
10 added). In *Augustus*, the California Supreme Court expressly rejected the employers' assertion that it
11 could provide an on-duty rest period to employees who worked as security guards and further
12 explained "that employers [must] relinquish any control over how employees spend their break time
13 and relieve their employees of all duties." *Id.* at 273.

14 33. Each time aggrieved employees were unable to take a compliant rest period,
15 Defendants failed and continues to fail to adequately pay rest period premium payments at the
16 "regular rate of pay" as required by Labor Code § 226.7.

17 34. Accordingly, due to Defendants' uniform rest period policies/practices, aggrieved
18 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
19 512, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

20 35. As a result of the above Labor Code violations, at all relevant times, Defendants also
21 failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the
22 payment of wages to Plaintiff and other aggrieved employees, including minimum and overtime
23 wages, as well as meal and rest period premiums. Based on the foregoing Labor Code violations,
24 Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §
25 2699(f)(2), and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

26 36. As a result of Defendants' failure to pay Plaintiff and other aggrieved employees for
27 all overtime hours, sick pay, vested vacation hours and PTO, and Defendants' failure to pay for all
28 meal and rest period premiums at the "regular rate of pay," Defendants issued wage statements which

1 failed to accurately identify the gross wages earned, the total hours worked, the net wages earned,
2 and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code
3 § 226(a)(1, 2, 5, and 9).

4 37. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
5 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
6 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
7 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
8 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

9 38. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants
10 has violated Labor Code § 226(a) with respect to Plaintiff and other aggrieved employees.
11 Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff and other
12 aggrieved employees would be entitled to recover penalties under Labor Code § 2698 *et seq.*

13 39. Finally, as a result of Defendants’ failure to pay all overtime wages, sick pay, vacation
14 hours, PTO, and meal and rest period premiums at the “regular rate of pay,” Defendants also failed
15 and continues to fail to pay the aggrieved employees all wages owed at their time of separation from
16 employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to
17 recover penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

18 **FIRST CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 *(Plaintiff and Similarly Aggrieved Employees Against All Defendants)*

21 40. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
22 in the preceding paragraphs.

23 41. Defendants have committed several Labor Code violations against Plaintiff and
24 other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
25 Code § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action
26 against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees,
27 and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including,
28 but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per

1 employee per pay period for those violations of the Labor Code for which no civil penalty is
2 specifically provided based on the following Labor Code violations:

- 3 (a) Defendants' failure to pay the correct hourly rate for all overtime hours worked;
- 4 (b) Defendants' failure to pay all overtime wages at the "regular rate of pay" because
5 Defendants failed to include all forms of compensation, including, but not limited to, shift
6 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;
- 7 (c) Defendants' failure to pay all wages in a timely fashion in violation of Labor Code §
8 204;
- 9 (d) Defendants' failure to pay all sick pay at the "regular rate of pay";
- 10 (e) Defendants' failure to pay all vacation wages at the correct final rate;
- 11 (f) Defendants' failure to allow and permit legally compliant meal periods or compensation
12 at the "regular rate of pay" in lieu thereof;
- 13 (g) Defendants' failure to allow and permit legally compliant rest periods or compensation
14 at the "regular rate of pay" in lieu thereof;
- 15 (h) Defendants' failure to furnish legally compliant wage statements pursuant to Labor
16 Code § 226(a); and
- 17 (i) Defendants' failure to timely pay final wages to aggrieved employees at the time of
18 separation from employment were unlawful.

19 42. On or about February 2, 2023, Plaintiff notified Defendant Penumbra, Inc.
20 ("Defendant") via certified mail, and the California Labor and Workforce Development Agency
21 ("LWDA") via its website of Defendant's violations of the California Labor Code § 2698 *et. seq.*
22 with respect to violations of the California Labor Code identified in Paragraph 41 (a)-(i). Now that
23 sixty-five days (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
24 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
25 Act with respect to these violations.

26 43. Plaintiff was compelled to retain the services of counsel to file this court action to protect
27 her interests and the interests of other similarly aggrieved employees, and to assess and collect the
28 civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys' fees and costs, which

1 he is entitled to receive under California Labor Code § 2699.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
4 Defendants, as follows:

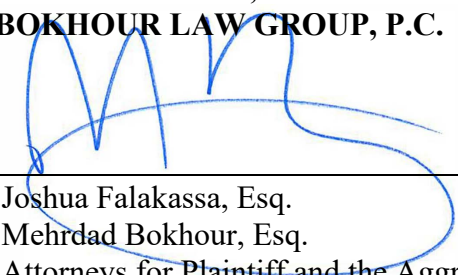
5 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
6 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
7 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
8 subsequent violation per employee per pay period for those violations of the Labor Code for which
9 no civil penalty is specifically provided under the Labor Code;

10 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
11 of Civil Procedure §1021.5; and

12 3. For such other and further relief, the Court may deem just and proper.

13
14 Dated: April 10, 2023

FALAKSSA LAW, P.C.
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16
17 By: 

18 Joshua Falakassa, Esq.
19 Mehrdad Bokhour, Esq.
20 Attorneys for Plaintiff and the Aggrieved Employees
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