

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

Jeffrey S. Herman (State Bar #280058)

jeffrey@bamlawca.com

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

Electronically FILED by
Superior Court of California,
County of Los Angeles
7/03/2024 3:10 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By A. Oliva, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MICHAEL SALAZAR, an individual, and on
behalf of the State of California, as a private
attorney general,

Plaintiff,

vs.

CARDINAL HEALTH PHARMACY
SERVICES, LLC, a Limited Liability Company;
and DOES 1 through 50, inclusive,

DEFENDANT.

Case No. **24NNCV02711**

COMPLAINT FOR:

**1. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2699, ET. SEQ. FOR
VIOLATION OF LABOR CODE §§ 201, 202,
203, 204 ET. SEQ., 210, 218, 221, 226(a), 226.7,
227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197,
1197.1, 1198, 2802, CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11040,
SUBDIVISION 5(A)-(B), CALIFORNIA CODE
OF REGULATIONS, TITLE 8, SECTION
11070(14) (FAILURE TO PROVIDE
SEATING), AND THE APPLICABLE WAGE
ORDER(S);**

2. RETALIATION IN VIOLATION OF FEHA;

**3. FAILURE TO PREVENT RETALIATION
IN VIOLATION OF FEHA;**

**4. VIOLATION OF LABOR CODE § 1102.5;
and,**

**5. WRONGFUL TERMINATION OF
EMPLOYMENT IN VIOLATION OF FEHA
AND PUBLIC POLICY;**

DEMAND FOR A JURY TRIAL

1 Michael Salazar (“PLAINTIFF”), on behalf of the people of the State of California and as an
2 “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorney
3 General Act of 2004, § 2699, *et seq.* (“PAGA”) with regard to the First Cause of Action, and as an
4 individual with regard to the Second through Fifth Causes of Action, alleges on information and belief,
5 except for his own acts and knowledge which are based on personal knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings the First Cause of Action against Defendant CARDINAL HEALTH
8 PHARMACY SERVICES, LLC (referred to as “DEFENDANT”) seeking to recover PAGA civil
9 penalties on behalf of all current and former aggrieved employees that worked for DEFENDANT. As
10 to the First Cause of Action PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are mentioned
12 for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but 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 himself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature
16 of the First Cause of Action.

17 3. Accordingly, in the First Cause of Action, PLAINTIFF seeks to obtain all applicable
18 relief for 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.

20 4. PLAINTIFF is not suing in the First Cause of Action in his individual capacity, he is
21 proceeding solely under the PAGA, on behalf of the State of California for all aggrieved employees,
22 including himself and other aggrieved employees. Nothing in this complaint should be construed as
23 PLAINTIFF suing in his individual capacity.

24 5. PLAINTIFF brings the Second through Fifth Causes of Action against DEFENDANT
25 for economic, non-economic, compensatory, and punitive damages, pursuant to Civil Code section
26 3294, pre-judgment interest pursuant to Code of Civil Procedure section 3291, and costs and reasonable
27 attorneys’ fees pursuant to Government Code section 12965(b) and Code of Civil Procedure section
28 1021.5.

THE PARTIES

6. Cardinal Health Pharmacy Services, LLC (“DEFENDANT”) is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California, county of Los Angeles.

7. DEFENDANT is a distributor of pharmaceuticals, a manufacturer and distributor of medical and laboratory products, and a provider of performance and data solutions for healthcare facilities.

8. PLAINTIFF was employed by DEFENDANT in California from December of 2022 through August 22, 2023 at USC Arcadia Hospital. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

9. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of August 18, 2022 until a date as determined by the Court (the “PAGA PERIOD”).

10. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT’s violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

1 11. The true names and capacities, whether individual, corporate, subsidiary, partnership,
2 associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to
3 PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ.
4 Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
5 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
6 believes, and based upon that information and belief alleges, that the DEFENDANT named in this
7 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more
8 of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

9 12. The agents, servants and/or employees of the DEFENDANT and each of them acting
10 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
11 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
12 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
13 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and all
14 DEFENDANT are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES,
15 for the loss sustained as a proximate result of the conduct of the DEFENDANT's agents, servants
16 and/or employees.

17 13. All DEFENDANT compelled, coerced, aided, and/or abetted the discrimination,
18 retaliation, and harassment alleged in this Complaint, which conduct is prohibited under California
19 Government Code section 12940(i). All DEFENDANT were responsible for the events and damages
20 alleged herein, including on the following bases: (a) DEFENDANT committed the acts alleged; (b)
21 at all relevant times, one or more of the DEFENDANT was the agent or employee, and/or acted under
22 the control or supervision, of one or more of the remaining DEFENDANT and, in committing the acts
23 alleged, acted within the course and scope of such agency and employment and/or is or are otherwise
24 liable for plaintiff's damages; (c) at all relevant times, there existed a unity of ownership and interest
25 between or among two or more of the DEFENDANT such that any individuality and separateness
26 between or among those DEFENDANT has ceased, and DEFENDANT are the alter egos of one
27 another. DEFENDANT exercised domination and control over one another to such an extent that any
28 individuality or separateness of DEFENDANT does not, and at all times herein mentioned did not,

1 exist. Adherence to the fiction of the separate existence of DEFENDANT would permit abuse of the
2 corporate privilege and would sanction fraud and promote injustice. All actions of all DEFENDANT
3 were taken by employees, supervisors, executives, officers, and directors during employment with all
4 DEFENDANT, were taken on behalf of all DEFENDANT, and were engaged in, authorized, ratified,
5 and approved of by all other DEFENDANT.

6 14. DEFENDANT both directly and indirectly employed PLAINTIFF, as defined in the Fair
7 Employment and Housing Act ("FEHA") at Government Code section 12926(d).

8 15. In addition, DEFENDANT compelled, coerced, aided, and abetted the discrimination,
9 which is prohibited under California Government Code section 12940(i).

10 16. Finally, at all relevant times mentioned herein, all Defendants acted as agents of all
11 other Defendants in committing the acts alleged herein.

12 **THE CONDUCT**

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

1 to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to
2 clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFF and the
3 AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal
4 breaks by working without their time being correctly recorded and without compensation at the
5 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the AGGRIEVED
6 EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

7 18. 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 AGGRIEVED
9 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific elements of
10 an employee's performance.

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

25 20. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
26 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were
27 not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED EMPLOYEES
28 were required from time to time to perform work as ordered by DEFENDANT for more than five (5)

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

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

27 22. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
28 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these employees

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

13 23. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
14 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
15 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
16 employer shall furnish each of his or her employees with an accurate itemized wage statement in
17 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
18 during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF
19 and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements
20 should reflect all applicable hourly rates during the pay period and the total hours worked, and the
21 applicable pay period in which the wages were earned pursuant to California Labor Code Section
22 226(a). The wage statements DEFENDANT provided to PLAINTIFF and the AGGRIEVED
23 EMPLOYEES failed to identify such information. More specifically, the wage statements failed to
24 identify the accurate total hours worked each pay period. When the hours shown on the wage
25 statements were added up, they did not equal the actual total hours worked during the pay period in
26 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
27 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements
28 under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided

1 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab.
2 Code § 226.

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

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

10 25. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
11 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal. Lab.
12 Code § 204(d), including but not limited to for the “Hourly” regular wage payments.

13 26. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
14 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
15 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
16 remuneration, including, but not limited to, incentives, shift differential pay, and bonuses. Rather than
17 pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to PLAINTIFF and the
18 AGGRIEVED EMPLOYEES at their base rates of pay.

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

22 28. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
23 regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
24 discretionary incentive wages which increased their regular rate of pay. However, when sick pay was
25 paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES, as
26 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.
27
28

1 29. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and the
2 AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties pursuant
3 to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based thereon alleges
4 that such failure to pay sick pay at regular rate was willful, such that the AGGRIEVED EMPLOYEES
5 whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
6 Sections 201-203.

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

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

23 32. In the course of their employment PLAINTIFF and the AGGRIEVED EMPLOYEES
24 as a business expense, were required by DEFENDANT to use their own personal cellular phones as
25 a result of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed
26 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones
27 for DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were
28 required by DEFENDANT to use their personal cellular phones. As a result, in the course of their

1 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred
2 unreimbursed business expenses which included, but were not limited to, costs related to the use of
3 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

4 33. In violation of the applicable sections of the California Labor Code and the requirements
5 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of
6 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
7 PLAINTIFF and the other AGGRIEVED EMPLOYEES suitable seating when the nature of these
8 employees' work reasonably permitted sitting.

9 34. DEFENDANT knew or should have known that PLAINTIFF and other AGGRIEVED
10 EMPLOYEES were entitled to suitable seating and/or were entitled to sit when it did not interfere with
11 the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not
12 allow them to sit when it did not interfere with the performance of their duties.

13 35. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
14 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-2001,
15 Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf of PLAINTIFF
16 and other AGGRIEVED EMPLOYEES as provided herein. Providing suitable seating is the
17 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
18 this burden, DEFENDANT violated the California Labor Code and regulations promulgated thereunder
19 as herein alleged.

20 36. The employment of some AGGRIEVED EMPLOYEES has terminated and
21 DEFENDANT has not tendered payment of all wages owed as required by law. Additionally, at all
22 times during the term of PLAINTIFF's employment with DEFENDANT, AGGRIEVED EMPLOYEES
23 earned and accrued vested vacation and holiday time on the date of their termination pursuant to
24 DEFENDANT's uniform vacation policies and applicable California law. The amount of vacation pay
25 AGGRIEVED EMPLOYEES earned and accumulated is evidenced by DEFENDANT's business
26 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to AGGRIEVED
27 EMPLOYEES by failing to pay such wages at the regular rate of pay and more specifically the final
28 rate of pay that included all non-discretionary incentive compensation. Rather than pay vacation wages

1 at the regular rate of pay, DEFENDANT underpaid vacation wages to AGGRIEVED EMPLOYEES
2 at their base rates of pay, instead of including all of the AGGRIEVED EMPLOYEES' non-
3 discretionary incentive compensation into the vacation wage payment calculations. DEFENDANT
4 failed to specify in DEFENDANT's written vacation policy the rate at which AGGRIEVED
5 EMPLOYEES would be paid vacation upon leaving employment with DEFENDANT. As a result of
6 DEFENDANT's unlawful practice, policy and procedure to deny paying the AGGRIEVED
7 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay AGGRIEVED
8 EMPLOYEES all vested vacation time as wages due upon employment termination, in violation of the
9 California Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting
10 time penalties to AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of the
11 AGGRIEVED EMPLOYEES' non-discretionary compensation into the waiting time penalty
12 calculations. This failure by DEFENDANT is believed to be the result of DEFENDANT's unlawful,
13 unfair and deceptive refusal to provide compensation for earned, accrued and vested vacation and
14 holiday time, as well as the corresponding waiting time penalties that were paid. DEFENDANT
15 perpetrated this unlawful, unfair and deceptive practice to the detriment of AGGRIEVED
16 EMPLOYEES. DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
17 EMPLOYEES for all vested vacation and holiday time accumulated at employment termination
18 violated and continues to violate Section 227.3 of the California Labor Code.

19 37. In the Spring of 2023, PLAINTIFF began raising safety complaints to DEFENDANT
20 regarding the medication and documentation of medicine. Specifically, PLAINTIFF complained of
21 inaccurate documentation of medication by logging falsified temperature recordings for compound logs
22 for vaccines and other medications including Ferric Gluconate, the failure to properly refrigerate
23 medications, and improper storage of medications in tubes, to Supervisor, Tiffany Redmond.
24 PLAINTIFF understands that the safety concerns could cause severe harm to patients. Defendant did
25 not investigate PLAINTIFF's safety complaints.

26 38. PLAINTIFF's safety complaints to DEFENDANT continued throughout his
27 employment.
28

39. On July 14, 2023, DEFENDANT's Director of Pharmacy Saboor Shahzad, erroneously blamed claimant for bathroom vandalism without substantiation. The charge which was closed out on July 27, 2023 and PLAINTIFF was not found to be at fault.

40. On July 21, 2023, PLAINTIFF was involved in a verbal altercation with Patricia Harris, who cornered PLAINTIFF and would not let him leave the break room, during which Tiffany Redman was present.

41. On July 28, 2023, Tiffany Redman placed PLAINTIFF on paid administrative leave.

42. On July 30, 2023, also reported his safety concerns to Joint Commission Accreditation of Hospital Organization (JCAHO), on or around the same date the State Board of Pharmacy and the CEO of USC copying Quanteria Roberson, Tiffany Redman and Sabor Shahzad.

43. On August 4, 2023, Beatriz Vera from Human Resources interviewed PLAINTIFF via email regarding the July 21, 2023, incident, but not the Safety Complaints.

44. On August 22, 2023, the JCAHO visited DEFENDANT's USC Arcadia Hospital location to investigate the Complaints made by PLAINTIFF.

45. On the same day of JCAHO's visit to USC Arcadia Hospital, August 22, 2023, DEFENDANT's Agent Tiffany Redman informed PLAINTIFF he was terminated immediately.

46. At all times relevant hereto, PLAINTIFF was willing and able to conduct the essential job functions of his employment with DEFENDANT.

47. Prior to filing this action, PLAINTIFF exhausted his administrative remedies by filing a timely administrative complaint with the Department of Fair Employment and Housing (“DFEH”) and receiving a DFEH right-to-sue letter against DEFENDANT.

JURISDICTION AND VENUE

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

1 49. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
2 395.5 and 393, because DEFENDANT operates in locations across California, employs AGGRIEVED
3 EMPLOYEES across California, including in this County, and committed the wrongful conduct herein
4 alleged in this County against AGGRIEVED EMPLOYEES.

5 **FIRST CAUSE OF ACTION**

6 **For Violation of the Private Attorneys General Act**

7 **[Cal. Lab. Code §§ 2698, *et seq.*]**

8 **(By PLAINTIFF and Against All DEFENDANT)**

9 50. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
10 the prior paragraphs of this Complaint.

11 51. PAGA is a mechanism by which the State of California itself can enforce state labor
12 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
13 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
14 enforcement action designed to protect the public and not to benefit private parties. The purpose of
15 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
16 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
17 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
18 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly,
19 PAGA claims cannot be subject to arbitration.

20 52. PLAINTIFF, and such persons that may be added from time to time who satisfy the
21 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
22 this Representative Action on behalf of the State of California with respect to himself and all
23 individuals who are or previously were employed by DEFENDANT in California, including any
24 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
25 ("AGGRIEVED EMPLOYEES") during the time period of August 18, 2022 until a date as determined
26 by the Court (the "PAGA PERIOD").

27 53. On August 18, 2023, PLAINTIFF gave written notice by electronic mail to the Labor
28 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the

1 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See*
2 **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA Notice only without draft*
3 *complaint*). The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has
4 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative
5 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
6 to all AGGRIEVED EMPLOYEES as herein defined.

7 54. The policies, acts and practices heretofore described were and are an unlawful business
8 act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the AGGRIEVED
9 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
10 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
11 sick pay wages, (e) failed to reimburse employees for required expenses, (f) failed to provide wages
12 when due, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code
13 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246,
14 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
15 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14)
16 (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties
17 as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
18 Labor Code Private Attorney General Act of 2004 as the representative of the State of California for
19 the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

20 55. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
21 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during
22 the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED
23 EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for
24 Publication 12/19/18).

25 ///

26
27
28 ¹As to the First Cause of Action alleging violations of the PAGA, Plaintiff specifically excludes
and/or does not allege any claims under California Labor Code §558(a)(3).

SECOND CAUSE OF ACTION

(Violation of FEHA (Government Code § 12900, *et seq.*) (Retaliation for the Exercise of Rights Guaranteed Under the FEHA, Participating in Protected Activities, and/or Opposing DEFENDANT's Failure to Provide Such Rights)— By PLAINTIFF Individually, Against DEFENDANT and Does 1 to 50, Inclusive.)

56. The allegations set forth in paragraphs 1 through 55 are re-alleged and incorporated herein by reference.

57. DEFENDANT's conduct, as alleged, violated FEHA, Government Code section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices, including by the following, separate bases for liability:

a. Taking adverse employment actions against plaintiff, including discharging, barring, refusing to transfer, retain, hire, select, and/or employ, transferring, demoting, terminating and/or otherwise discriminating against plaintiff, in whole or in part on the basis of plaintiff making complaints of illegal workplace harassment and discrimination and requesting FMLA leave; actual, perceived, and/or history of physical disability; and/or other protected characteristics, in violation of Government Code section 12940(a);

b. Harassing plaintiff and/or creating a hostile work environment, in whole or in part on the basis of plaintiff making complaints of illegal harassment and discrimination, requesting FMLA leave; actual, perceived, and/or history of physical disability; and/or other protected characteristics, in violation of Government Code section 12940(j);

c. Failing to take all reasonable steps to prevent discrimination, harassment, and retaliation based on Plaintiff's complaints of illegal harassment and discrimination, requesting FMLA leave; actual, perceived, and/or history of physical disability; and/or other protected characteristics, in violation of Government Code section 12940(k);

d. Retaliating against plaintiff for seeking to exercise rights guaranteed under FEHA, participating in protected activities, and/or opposing DEFENDANT's failure to provide such rights, including the right to a reasonable accommodation, the right of interactive process, leave rights,

1 and/or the right to be free of discrimination and harassment in violation of Government Code section
2 12940(h).

3 58. As a proximate result of DEFENDANT's willful, knowing, and intentional retaliation
4 against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses of earnings
5 and other employment benefits.

6 59. As a proximate result of DEFENDANT's willful, knowing, and intentional retaliation
7 against PLAINTIFF, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress,
8 and physical and mental pain and anguish, all to her damage in a sum according to proof.

9 60. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
10 Pursuant to Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable
11 attorneys' fees and costs (including expert costs) in an amount according to proof.

12 61. DEFENDANT's misconduct was committed intentionally, in a malicious, despicable,
13 oppressive manner, entitling PLAINTIFF to punitive damages against DEFENDANT.

14
15 **THIRD CAUSE OF ACTION**

16 **(Failure to Prevent Retaliation (Government Code § 12940(k))— Against DEFENDANT and**
17 **Does 1 to 50, Inclusive)**

18 62. The allegations set forth in paragraphs 1 through 61 are re-alleged and incorporated
19 herein by reference.

20 63. DEFENDANT's conduct, as alleged, violated the FEHA, Cal. Govt. Code section
21 12900, et seq., and DEFENDANT committed unlawful employment practices, including, without
22 limitation, by the following, separate bases for liability: failing to take all reasonable steps to prevent
23 discrimination, harassment, and/or retaliation based on national origin, physical disability, medical
24 condition, need for accommodation, taking FMLA leave, and/or good faith complaints, in violation
25 of Cal. Govt. Code section 12940(k).

26 64. As a proximate result of DEFENDANT's willful, knowing, and intentional
27 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial
28

1 losses of earnings and other employment benefits.

2 65. As a proximate result of DEFENDANT's willful, knowing, and intentional
3 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer humiliation,
4 emotional distress, and physical and mental pain and anguish, all to her damage in a sum according
5 to proof.

6 66. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
7 PLAINTIFF is at present unaware of the precise amounts of these expenses and fees and will seek
8 leave of court to amend this Complaint when the amounts are fully known.

9 67. DEFENDANT's misconduct was committed intentionally, in a malicious, despicable,
10 oppressive manner, entitling PLAINTIFF to punitive damages against defendant.

11 **FOURTH CAUSE OF ACTION**

12 **(Violations of Labor Code § 1102.5, et seq.)—Against DEFENDANT and Does 1 to 50,**
13 **Inclusive)**

14 68. The allegations set forth in paragraphs 1 through 67 are re-alleged and incorporated
15 herein by reference.

16 69. At all relevant times, Labor Code section 1102.5 was in effect and was binding on
17 DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee, including
18 PLAINTIFF, for raising complaints of illegality and/or belief that the employee may disclose illegality.

19 70. PLAINTIFF raised complaints of illegality while she worked for DEFENDANT and
20 was believed to be willing to raise complaints and request leave, and DEFENDANT retaliated against
21 her by discriminating against her, harassing her, and taking adverse employment actions, including
22 employment termination, against her.

23 71. As a proximate result of DEFENDANT's willful, knowing, and intentional violations
24 of Labor Code section 1102.5, PLAINTIFF has suffered and continues to suffer humiliation, emotional
25 distress, and mental and physical pain and anguish, all to her damage in a sum according to proof.

26 72. As a result of DEFENDANT's adverse employment actions against PLAINTIFF,
27 PLAINTIFF has suffered general and special damages in sums according to proof.
28

1 73. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive
2 manner, and fraudulent manner entitling PLAINTIFF to punitive damages against Defendant.

3 **FIFTH CAUSE OF ACTION**

4 **(Wrongful Termination of Employment in Violation of Public Policy (Labor Code § 1102.5;**
5 **FEHA, Government Code § 12900, et seq.)—Against DEFENDANT and Does 1 to 50**
6 **Inclusive)**

7 74. The allegations set forth in paragraphs 1 through 69 are re-alleged and incorporated
8 herein by reference.

9 75. DEFENDANT terminated PLAINTIFF's employment in violation of various
10 fundamental public policies underlying both state and federal laws. Specifically, PLAINTIFF's
11 employment was terminated in part because of his protected status (i.e., good faith complaints). These
12 actions were in violation of FEHA, the California Constitution, and California Labor Code section
13 1102.5.

14 76. As a proximate result of DEFENDANT's wrongful termination of PLAINTIFF's
15 employment in violation of fundamental public policies, PLAINTIFF has suffered and continues to
16 suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in
17 a sum according to proof.

18 77. As a result of DEFENDANT's wrongful termination of her employment, PLAINTIFF
19 has suffered general and special damages in sums according to proof.

20 78. DEFENDANT's wrongful termination of PLAINTIFF's employment was done
21 intentionally, in a malicious, fraudulent, oppressive manner, entitling PLAINTIFF to punitive damages.

22 79. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
23 Pursuant to Code of Civil Procedure sections 1021.5 and 1032, et seq., PLAINTIFF is entitled to
24 recover reasonable attorneys' fees and costs in an amount according to proof.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
27 severally, as follows:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. For the First Cause of Action on behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

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

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

2. For the Second through Fifth Causes of Action on behalf of PLAINTIFF Individually:

- A) For general and special damages according to proof;
- B) For exemplary damages, according to proof;
- C) For pre-judgment and post-judgment interest on all damages awarded;
- D) For reasonable attorneys’ fees;
- E) For costs of suit incurred;
- G) For such other and further relief as the Court may deem just and proper.

Dated: July 3, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: July 3, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

August 18, 2023

CA3059

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Cardinal Health Pharmacy Services, LLC
Certified Mail #9589071052700182373883
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Cardinal Health Pharmacy Services, LLC in California, including any employees staffed with Cardinal Health Pharmacy Services, LLC by a third party, and classified as non-exempt employees during the time period of August 18, 2022 until a date as determined by the Court. Our offices represent Plaintiff Michael Salazar (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Cardinal Health Pharmacy Services, LLC (“Defendant”). Plaintiff has been employed by Defendant in California as a non-exempt employee since December of 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks (and paying for meal and rest break premiums at the correct regular rate), and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right

to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a) *et seq.* Plaintiff and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provides to Plaintiff and other Aggrieved Employees fails to identify such information. More specifically, the wage statements fails to identify the accurate total hours worked each pay period. When the hours shown on the wage statements are added up, they do not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.