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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

MERCY BENSON and TIFFANY LAO, on
behalf of the State of California, as private
attorneys general,

Plaintiffs,

vs.

KERN VALLEY HEALTHCARE DISTRICT,
a corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. BCV-24-101013

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 210, 512.1, 558(a)(1)(2), 1197.1,
and the applicable Wage Order(s).

1 Plaintiffs Mercy Benson and Tiffany Lao (“PLAINTIFFS”), on behalf of the people of
2 the State of California and as “aggrieved employees” acting as private attorneys general under
3 the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, allege
4 on information and belief, except for their own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Kern Valley Healthcare District (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for themselves, and on
9 behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFFS do **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFFS do 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 individuals to bring an action on
15 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
16 sole nature of this action.

17 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Kern Valley Healthcare District (“DEFENDANT”) is a corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in
25 California.
26

27 5. DEFENDANT owns and operates a hospital providing health services in
28 California.

1 6. Plaintiff Benson was employed by DEFENDANT in California from October
2 2021 to March 20, 2023. Plaintiff Benson was at all times classified by DEFENDANT as a
3 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
4 periods and payment of minimum and overtime wages due for all time worked. Plaintiff Benson
5 was an employee who provided direct patient care or supports direct patient care in a general
6 acute care hospital, clinic, or public health setting.

7 7. Plaintiff Lao has been employed by DEFENDANT in California since March
8 2017. Plaintiff Lao is at all times classified by DEFENDANT as a non-exempt employee, paid
9 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
10 minimum and overtime wages due for all time worked. Plaintiff Lao is an employee who
11 provides direct patient care or supports direct patient care in a general acute care hospital, clinic,
12 or public health setting.

13 8. PLAINTIFFS, and such persons that may be added from time to time who satisfy
14 the requirements and exhaust the administrative procedures under the Private Attorney General
15 Act, bring this Representative Action on behalf of the State of California with respect to
16 themselves and all individuals who are or previously were employed by DEFENDANT in
17 California, including any employees staffed with DEFENDANT by a third party, and classified
18 as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of
19 November 30, 2022 until a date as determined by the Court (the "PAGA PERIOD").

20 9. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
21 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
22 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
23 DEFENDANT’s violation of California Labor Code §§ 558(a)(1)(2), 1197.1, and the
24 applicable Wage Order(s). PLAINTIFFS, on behalf of themselves and all AGGRIEVED
25 EMPLOYEES presently or formerly employed by DEFENDANT during the period
26 beginning January 1, 2023 and ending on a date as determined by the Court, bring this
27 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
28

1 DEFENDANT's violation of California Labor Code § 512.1. Based upon the foregoing,
2 PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within the
3 meaning of Labor Code § 2699, *et seq.*

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

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

21 22 THE CONDUCT

23 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
24 was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time
25 worked, meaning the time during which an employee is subject to the control of an
26 employer, including all the time the employee is suffered or permitted to work.
27 DEFENDANT requires PLAINTIFFS and the AGGRIEVED EMPLOYEES to work
28 without paying them for all the time they are under DEFENDANT's control. Among other

1 things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is
2 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time
3 interrupted by work assignments while clocked out for what should have been
4 PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company
5 policy and procedure, administers a uniform practice of rounding the actual time worked and
6 recorded by PLAINTIFFS and the AGGRIEVED EMPLOYEES, always to the benefit of
7 DEFENDANT, so that during the course of their employment, PLAINTIFFS and the
8 AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been
9 paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT
10 engages in the practice of requiring PLAINTIFFS and the AGGRIEVED EMPLOYEES to
11 perform work off the clock in that DEFENDANT, as a condition of employment, required
12 these employees to submit to mandatory temperature checks and symptom questionnaires for
13 COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the
14 workday. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeit minimum
15 wage, and off-duty meal breaks by working without their time being correctly recorded and
16 without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
17 PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by
18 DEFENDANT's business records.

19 13. State law provides that employees must be paid meal and rest break premiums
20 at one additional hour of pay at their "regular rate of pay." PLAINTIFFS and the
21 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
22 tied to specific elements of an employee's performance.

23 14. The second component of PLAINTIFFS' and the AGGRIEVED
24 EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that
25 paid PLAINTIFFS and the AGGRIEVED EMPLOYEES incentive wages based on their
26 performance for DEFENDANT. The non-discretionary incentive program provided all
27 employees paid on an hourly basis with incentive compensation when the employees met the
28 various performance goals set by DEFENDANT. However, when calculating the regular

1 rate of pay in order to pay meal and rest break premiums to PLAINTIFFS and the
2 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation
3 as part of the employees' "regular rate of pay" for purposes of calculating meal and rest
4 break premium pay. Management and supervisors described the incentive program to
5 potential and new employees as part of the compensation package. As a matter of law, the
6 incentive compensation received by PLAINTIFFS and the AGGRIEVED EMPLOYEES
7 must be included in the "regular rate of pay." The failure to do so has resulted in a
8 underpayment of meal and rest break premiums to PLAINTIFFS and the AGGRIEVED
9 EMPLOYEES by DEFENDANT.

10 15. As a result of their rigorous work schedules, PLAINTIFFS and the
11 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
12 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS
13 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
14 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
15 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and
16 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
17 which these employees were required by DEFENDANT to work ten (10) hours of work.
18 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
19 paying penalties to PLAINTIFFS and the AGGRIEVED EMPLOYEES. PLAINTIFFS and
20 the AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional
21 compensation and in accordance with DEFENDANT's corporate policy and practice.

22 16. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED
23 EMPLOYEES were also required from time to time to work in excess of four (4) hours
24 without being provided ten (10) minute rest periods. Further, these employees were denied
25 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
26 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
27 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
28 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)

1 hours or more from time to time. PLAINTIFFS and the AGGRIEVED EMPLOYEES were
2 also not provided with one hour wages in lieu thereof. Additionally, the applicable
3 California Wage Order requires employers to provide employees with off-duty rest periods,
4 which the California Supreme Court defined as time during which an employee is relieved
5 from all work related duties and free from employer control. In so doing, the Court held that
6 the requirement under California law that employers authorize and permit all employees to
7 take rest period means that employers must relieve employees of all duties and relinquish
8 control over how employees spend their time which includes control over the locations
9 where employees may take their rest period. Employers cannot impose controls that prohibit
10 an employee from taking a brief walk - five minutes out, five minutes back. Here,
11 DEFENDANT's policy restricted PLAINTIFFS and the AGGRIEVED EMPLOYEES from
12 unconstrained walks and is unlawful based on DEFENDANT's rule which states
13 PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot leave the work premises during
14 their rest period.

15 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and
16 pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these
17 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for
19 all time worked, meaning the time during which an employee was subject to the control of
20 an employer, including all the time the employee was permitted or suffered to permit this
21 work. DEFENDANT required these employees to work off the clock without paying them
22 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
23 should have known that PLAINTIFFS and the AGGRIEVED EMPLOYEES were under
24 compensated for all time worked. As a result, PLAINTIFFS and the AGGRIEVED
25 EMPLOYEES forfeited time worked by working without their time being accurately
26 recorded and without compensation at the applicable minimum wage rates. To the extent
27 that the time worked off the clock does not qualify for overtime premium payment,
28

1 DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation
2 of Cal. Lab. Code § 1197.1.

3 32. All of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations
6 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
7 2018 AJDAR 12157 (Certified for Publication 12/19/18). The amount in controversy for
8 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

9
10 **JURISDICTION AND VENUE**

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

13 34. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT
15 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and
16 facilities in this County and/or conducts substantial business in this County, and (ii)
17 committed the wrongful conduct herein alleged in this County against PLAINTIFFS and
18 other AGGRIEVED EMPLOYEES.

19 **FIRST CAUSE OF ACTION**

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

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

22 **(By PLAINTIFFS and Against All Defendants)**

23 35. PLAINTIFFS reallege and incorporate by this reference, as though fully set
24 forth herein, the prior paragraphs of this Complaint.

25 36. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
27 the state's labor law enforcement agencies. An action to recover civil penalties under
28

1 PAGA is fundamentally a law enforcement action designed to protect the public and not to
2 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
3 but to create a means of "deputizing" citizens as private attorneys general to enforce the
4 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
5 public interest to allow aggrieved employees, acting as private attorneys general to recover
6 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
7 claims cannot be subject to arbitration.

8 37. PLAINTIFFS, and such persons that may be added from time to time who
9 satisfy the requirements and exhaust the administrative procedures under the Private
10 Attorney General Act, bring this Representative Action on behalf of the State of California
11 with respect to themselves and all individuals who are or previously were employed by
12 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
13 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
14 time period of November 30, 2022 until a date as determined by the Court (the "PAGA
15 PERIOD").

16 38. On November 30, 2023, PLAINTIFFS gave written notice by electronic mail
17 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to
18 the employer of the specific provisions of this code alleged to have been violated as required
19 by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
20 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
21 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
22 Section 2699.3, PLAINTIFFS may now commence a representative civil action under
23 PAGA pursuant to Section 2699 as the proxies of the State of California with respect to all
24 AGGRIEVED EMPLOYEES as herein defined.

25 39. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANT (a) failed to properly record and provide
27 legally required meal and rest periods, and (b) failed to pay minimum wages, all in violation
28 of the applicable Labor Code sections listed in Labor Code §§ 512.1, 558(a)(1)(2), 1197.1,

1 and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
2 conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the
3 Labor Code Private Attorney General Act of 2004 as the representatives of the State of
4 California for the illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED
5 EMPLOYEES.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
8 severally, as follows:

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

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

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

15 Dated: August 13, 2024 BLUMENTHAL NORDREHAUG BHOWMIK
16 DE BLOUW LLP

17
18 By: /s/ Nicholas J. De Blouw
19 Norman B. Blumenthal
20 Kyle R. Nordrehaug
21 Nicholas J. De Blouw

22 *Attorneys for Plaintiffs*
23
24
25
26

27 _____
28 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
Code §558(a)(3).

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:
1004

November 30, 2023
CA 2941

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Kern Valley Healthcare District
Certified Mail #9589071052701316528124
6412 Laurel Avenue
Lake Isabella, CA 93240

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, 512.1, 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 Kern Valley Healthcare District in California, including any employees staffed with Kern Valley Healthcare District by a third party, and classified as non-exempt employees during the time period of November 30, 2022 until a date as determined by the Court. Our offices represent Plaintiffs Mercy Benson and Tiffany Lao (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against Kern Valley Healthcare District (“Defendant”). Plaintiff Benson was employed from October 2021 to March 20, 2023 by Defendant in California. Plaintiff Lao has been employed with Defendant since March of 2017. Plaintiffs were employees who provided direct patient care or supported direct patient care in a general acute hospital, clinic, or public health setting. Plaintiffs were at all times classified by Defendant as a non-exempt employees, 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. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs 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 Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs 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 Plaintiffs 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 Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were 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 provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs 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 Plaintiffs 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, 512.1, 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), 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 Plaintiffs 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 Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore incorporate 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 Plaintiffs 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 Statute of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions or 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.