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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

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of 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), 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 §§ 201, 202, 203, 204 *et seq.*, 210, 218,
24 221, 226(a), 226.7, 227.3, 246, 510, 512, 512.1, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
25 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
26 California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and
27 the applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all
28

1 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
2 2699, *et seq.*

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

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

20 21 THE CONDUCT

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

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

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

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

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

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

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

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

14 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and
15 pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these
16 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
17 DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for
18 all time worked, meaning the time during which an employee was subject to the control of
19 an employer, including all the time the employee was permitted or suffered to permit this
20 work. DEFENDANT required these employees to work off the clock without paying them
21 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
22 should have known that PLAINTIFFS and the AGGRIEVED EMPLOYEES were under
23 compensated for all time worked. As a result, PLAINTIFFS and the AGGRIEVED
24 EMPLOYEES forfeited time worked by working without their time being accurately
25 recorded and without compensation at the applicable minimum wage and overtime wage
26 rates. To the extent that the time worked off the clock does not qualify for overtime
27 premium payment, DEFENDANT failed to pay minimum wages for the time worked off-
28 the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

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

24 in [I]n addition to, and entirely independent and apart from, any other penalty provided
25 this article, every person who fails to pay the wages of each employee as provided in
26 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
27 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
28 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.

1 20. DEFENDANT from time to time failed to pay PLAINTIFFS and the
2 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
3 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Hourly” regular
4 wage payments.

5 21. DEFENDANT underpaid sick pay wages to PLAINTIFFS and the
6 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
7 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
8 employees earn non-discretionary remuneration, including, but not limited to, incentives,
9 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
10 DEFENDANT underpays sick pay to PLAINTIFFS and the AGGRIEVED EMPLOYEES at
11 their base rates of pay.

12 22. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
13 employees be calculated by dividing the employee’s total wages, not including overtime
14 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
15 days of employment.

16 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
17 at the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely
18 earned non-discretionary incentive wages which increased their regular rate of pay.
19 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and
20 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
21 required under Cal. Lab. Code Section 246.

22 24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS
23 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
24 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and
25 believe and based thereon allege that such failure to pay sick pay at regular rate was willful,
26 such that the AGGRIEVED EMPLOYEES whose employment has separated are entitled to
27 waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.
28

1 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
2 to collect or receive from an employee any part of wages theretofore paid by said employer
3 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and
4 the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
5 PLAINTIFFS and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
6 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED
7 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
8 pay period and upon termination.

9 26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
10 PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred
11 by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of
12 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
13 2802, employers are required to indemnify employees for all expenses incurred in the course
14 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
15 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
16 employee in direct consequence of the discharge of his or her duties, or of his or her
17 obedience to the directions of the employer, even though unlawful, unless the employee, at
18 the time of obeying the directions, believed them to be unlawful."

19 27. In the course of their employment PLAINTIFFS and the AGGRIEVED
20 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
21 personal cellular phones as a result of and in furtherance of their job duties as employees for
22 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
23 associated with the use of their personal cellular phones for DEFENDANT's benefit.
24 Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required by
25 DEFENDANT to use their personal cellular phones. As a result, in the course of their
26 employment with DEFENDANT, PLAINTIFFS and the AGGRIEVED EMPLOYEES
27 incurred unreimbursed business expenses which included, but were not limited to, costs
28

1 related to the use of their personal cellular phones all on behalf of and for the benefit of
2 DEFENDANT.

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

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

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

21 31. The employment of Plaintiff Benson and some AGGRIEVED EMPLOYEES
22 has terminated and DEFENDANT has not tendered payment of all wages owed as required
23 by law. Additionally, at all times during the term of Plaintiff Benson's employment with
24 DEFENDANT, Plaintiff Benson and other AGGRIEVED EMPLOYEES earned and
25 accrued vested vacation and holiday time on the date of their termination pursuant to
26 DEFENDANT's uniform vacation policies and applicable California law. The amount of
27 vacation pay Plaintiff Benson and the other AGGRIEVED EMPLOYEES earned and
28 accumulated is evidenced by DEFENDANT's business records. Additionally,

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

27 32. All of the conduct and violations alleged herein occurred during the PAGA
28

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

6
7 **JURISDICTION AND VENUE**

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

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

16
17 **FIRST CAUSE OF ACTION**

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

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

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

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

23 36. PAGA is a mechanism by which the State of California itself can enforce state
24 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
25 the state's labor law enforcement agencies. An action to recover civil penalties under
26 PAGA is fundamentally a law enforcement action designed to protect the public and not to
27 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
28 but to create a means of "deputizing" citizens as private attorneys general to enforce the

1 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
2 public interest to allow aggrieved employees, acting as private attorneys general to recover
3 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
4 claims cannot be subject to arbitration.

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

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

22 39. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
24 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
25 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
26 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
27 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
28 seating, all in violation of the applicable Labor Code sections listed in 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 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

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

1. 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.

Dated: March 20, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw
Attorneys for Plaintiffs

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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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.