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VERONICA PADILLA

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
03/26/2024

By: Jose Angel De Luna Romero,
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

VERONICA PADILLA, an individual and as a
representative of aggrieved employees pursuant to
the Private Attorneys General Act (PAGA),

Plaintiff,

vs.

BLUE CLOUD INVESTMENT HOLDINGS
LLC, a corporation; and DOES 1 through 10
inclusive,

Defendant.

Case No. VCU307322

PLAINTIFF'S COMPLAINT FOR:

**1. PRIVATE ATTORNEY'S GENERAL
ACT (LABOR CODE SECTION 2698)**

JURY TRIAL DEMANDED

Plaintiff Veronica Padilla (“Plaintiff”) alleges and complains against Defendants Blue Cloud Investment Holdings LLC and Does 1 through 10 (collectively, “Defendant”) as follows:

PARTIES | JURISDICTION | VENUE

1. Plaintiff, at all times relevant hereto, is and has been a resident of the State of California.

2. Defendant Blue Cloud Investment Holdings LLC, dba, Blue Cloud Pediatric Surgery Centers operates a nationwide network of pediatric dental surgery centers, including one 136 S Aspen Court, Visalia, California 93291 (the “worksite”).

3. Defendant conducts business in the State of California.

4. Under California Code of Civil Procedure section 395(a), venue is proper in this County because Defendant resides in this County and/or Plaintiff’s alleged injuries herein occurred in this County.

5. The true names and capacities of the defendants named herein as Does 1 through 10, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff believes that all of the Doe defendants are California residents. Plaintiff will amend this Complaint to show such true names and capacities when they have been determined. Defendant and Doe Defendants are collectively referred to as “Defendant,” “Defendants” or “Defendant Employers.”

6. Plaintiff believes that, at all times relevant herein, each defendant designated, including Does 1 through 10, was the agent, managing agent, principal, owner, partner, joint venturer, representative, manager, servant, employee, and/or co-conspirator of each of the other defendants, and was at all times mentioned herein acting within the course and scope of said agency and employment, and that all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

7. Defendant, and each of them, acted in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code section 12940(i). Defendant, and each of them, formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

ALTER EGO | AGENCY | JOINT EMPLOYER

8. There exists such a unity of interest and ownership between Defendant Employers that the individuality and separateness of Defendant Employers have ceased to exist. At all times relevant hereto, Defendant Employers, and each of them, were the agents, employees, managing agents, supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant Employers, and each of them, and in doing the things alleged herein, were acting at least in part within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or joint venture and with the permission and consent of each of the other Defendant Employers. Whenever and wherever reference is made in this complaint to any act or failure to act by a defendant or co-defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each defendant acting individually, jointly and severally.

9. Plaintiff believes Defendant Employers were both Plaintiff's joint employer and are liable under the joint employer and single enterprise theories. *See Laird v. Capital Cities* (1998) 68 Cal.App.4th 727, 737-38 (four factors to prove single enterprise are "interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control. ... Although courts consider the four factors together, they often deem centralized control of labor relations the most important."); *see also Vernon v. State of California* (2004) 116 Cal.App.4th 114, 128 (separate entities can also be deemed a "joint employer" by having the right to control the employment relationship, as evaluated by focusing on "an examination of defendant's role with respect to the right to hire, fire, transfer, promote, discipline, set the terms, conditions and privileges of employment, train and pay the plaintiff.")).

10. Defendant Employers were Plaintiff's employers, joint employers and/or special employers within the meaning of Government Code sections 12926 (d), 12940 (a),(h),(1), (h)(3)(A), (i), and, 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court. Defendant Employers were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and the applicable Industrial Welfare Commission Order, and are each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code sections 558 and/or 558.1, and liable to Plaintiff on that basis. Defendant Employers are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Defendant Employers.

1 Plaintiff performed services for each and every one of Defendant Employers, and to the mutual benefit
2 of all Defendant Employers, and all Defendant Employers shared control of Plaintiff as an employee,
3 either directly or indirectly, and the manner in which Defendant Employers' business was and is
4 conducted.

5 11. Labor Code section 558.1 provides that an employer or "other person acting on behalf of
6 an employer" who violates certain California wage and hour laws "may be held liable as the employer for
7 such violation." Labor Code section 558.1 defines "other person acting on behalf of an employer" as a
8 "natural person who is an owner, director, officer, or managing agent" of the employer. Labor Code
9 section 558.1(b). *See* Labor Code section 558(a) (authorizing civil penalties against "any employer or
10 other person acting on behalf of an employer" who causes overtime pay violations to occur."); *see Atempa*
11 *v. Pedrazzani*, 27 Cal.App.5th 809, 823-824 (2018); Labor Code section 1197.1 ("Any employer or other
12 person acting either individually or as an officer, agent, or employee of another person" for failure to pay
13 minimum wages."); *see Reynolds v. Bement*, 36 Cal.4th 1075, 1089 (2005) ("aggrieved employees may
14 ... maintain civil actions to recover such penalties"); *see Reynolds v. Bement*, 36 Cal.4th 1075, 1089, fn.
15 10 (2005) (alter ego doctrine may be used in wage claim actions to impose liability on controlling directors
16 and shareholders); *see* Government Code section 12925(d) (defining "Person" as one *or more* individuals,
17 partnerships, associations, corporations, limited liability companies, legal representatives, trustees,
18 trustees in bankruptcy, and receivers or other fiduciaries).

19 12. Despite the formation of purported corporate existence, Defendant Employers are, in
20 reality, one and the same, including, but not limited to because: (a) Defendant Employers are completely
21 dominated and controlled by one another, who personally committed the frauds and violated the laws as
22 set forth in this complaint, and who have hidden and currently hide behind Defendant Employers to
23 perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose; (b)
24 Defendant Employers derive actual and significant monetary benefits by and through one another's
25 unlawful conduct, and by using one another as the funding source for their own personal expenditures;
26 (c) Defendant Employers, while really one and the same, were segregated to appear as though separate
27 and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other
28 wrongful or inequitable purpose; (d) Defendant Employers does not comply with all requisite corporate

formalities to maintain a legal and separate corporate existence; (e) the business affairs of Defendant Employers are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion. Defendant Employers are, and at all times relevant hereto were, used by one another as a mere shell and conduit for the conduct of certain of Defendant Employers' affairs, and are, and were, the alter ego of one another. The recognition of the separate existence of each of the Defendant Employers would not promote justice, in that it would permit Defendant Employers to insulate themselves from liability to Plaintiff for violations of the law. The corporate existence of Defendant Employers should each be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein. Accordingly, Defendant Employers constitute the alter ego of one another, and the fiction of their separate corporate existence must be disregarded.

ADMINISTRATIVE EXHAUSTION

1. On January 18, 2024, Plaintiff's counsel gave written notice by online filing with the California Labor & Workforce Development Agency ("LWDA") and by sending via certified mail to Defendants a letter specifying the California Labor Code provisions Defendants violated, including the facts and theories supporting the alleged violations. More than sixty-five (65) days have passed since Plaintiff's counsel submitted the letter to the LWDA and certified-mailed the letter to Defendants, and the LWDA has not provided notice of intent to investigate the alleged violations, nor have Defendants provided notice of intent or any efforts to cure. Accordingly, the statutory period for any investigation or response has concluded and Plaintiff may commence this lawsuit pursuant to Labor Code section 2699, as provided by subsection 2699.3.

FACTUAL ALLEGATIONS

2. **Defendant.** Defendant Blue Cloud Investment Holdings LLC, dba, Blue Cloud Pediatric Surgery Centers operates a nationwide network of pediatric dental surgery centers, including one 136 S Aspen Court, Visalia, California 93291 (the "worksite").

3. **Plaintiff's Hire & Job Details.** On or about June 27, 2022, Defendant hired Plaintiff Veronica Padilla as an employee in the job position of registered nurse to work at the worksite.

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1 4. Defendant classified Plaintiff as a “non-exempt” employee. Defendant paid Plaintiff
2 approximately \$42 per hour.

3 5. Plaintiff’s job duties included assisting in pre-operation, patient care and assessment and
4 supporting the anesthesiologist during intubation, and caring for patients in the post-anesthesia care unit
5 (“pacu”).

6 6. Plaintiff’s work schedule was typically a four 10-hour day schedule, but Plaintiff often
7 worked through breaks and beyond her schedule, sometimes for more than 12 hours per day.

8 7. In August 2023, Plaintiff began reporting to Director of Nursing *Stephanie Conrad*. From
9 the start, Plaintiff was concerned about Stephanie Conrad’s patient care and safety abilities and practices,
10 but Plaintiff initially gave Stephanie Conrad the benefit of the doubt and worked with her without raising
11 concerns.

12 8. In late September 2023, Defendant gave Plaintiff a merit-based raise. Things were looking
13 good, until Plaintiff blew the whistle on patient safety concerns.

14 9. **Plaintiff Complains About Patient Safety.** In October 2023, Plaintiff started to notice
15 egregious unsafe working conditions. For instance, there would be two operating rooms for two nurses,
16 when there should have been four nurses staffed for two operating rooms, and nurses were being staffed
17 so that they were forced to work through their meal and rest breaks, creating a dangerous situation. During
18 a team meeting, Plaintiff advocated for Defendant to hire more nurses.

19 10. On October 24, 2023, Plaintiff complained to Stephanie Conrad about the unsafe working
20 conditions resulting from Defendant being short-staffed on nurses with a full load of patients and burnout
21 from the nurses working long shifts without adequate breaks. Plaintiff expressed concern about staffing
22 for the next day, and asked for Defendant to reduce operations to one operating room because of
23 Defendant’s shortage of nursing staff. Plaintiff complained about patient safety because the plan was to
24 force Plaintiff to work the next day as the only nurse with Stephanie Conrad in all facets of care (e.g., pre-
25 op, intra-op, and post-op pacu). Stephanie Conrad responded to Plaintiff’s concerns in a loud and
26 aggressive tone, stating “we are not going down to 1 OR – [Plaintiff], it is just you and me.” Plaintiff
27 asked to at least have a lighter than usual patient load and Stephanie Conrad said they would, but in fact,
28 they had the same patient load as they would if they had four nurses. Stephanie Conrad then directed

1 Plaintiff to leave her office.

2 11. The next morning, on October 25, 2023, Plaintiff followed-up with Stephanie Conrad.
3 Plaintiff let her know that Plaintiff had talked to an anesthesiologist about safety concerns and had come
4 up with a plan to stay in recovery to care for the post-op patients.

5 12. **Defendant Retaliates With A “Corrective Action.”** On November 15, 2023, Stephanie
6 Conrad, with HR Representative *Rachel Serio-Heavrin* present by video, issued a written “corrective
7 action” to Plaintiff. Exhibit 1. The corrective action related to Plaintiff’s October 25, 2023 complaint
8 about unsafe work conditions due to low nurse staffing. The corrective action included many fabrications
9 and exaggerations as a pretext to build a case to fire Plaintiff. Plaintiff repeated her staffing-shortage
10 complaints and raised her concern that her nursing license could be on the line.

11 13. Plaintiff started to draft a complaint to human resources, but was fired before she could
12 send it.

13 14. **Wrongful Termination (Retaliation).** On November 16, 2023, Defendant fired Plaintiff.
14 Around 1pm or 2pm, Stephanie Conrad informed Plaintiff she was terminated for not being respectful or
15 professional in how she complained. Plaintiff was shocked.

16 15. Plaintiff told them Defendant she was concerned about her license and being forced to
17 work in an unsafe situation, and that she had complained to Human Resources about it, but it did not
18 matter – Defendant terminated Plaintiff anyway.

19 16. Later that day, on November 16, 2023, Plaintiff emailed Human Resources her draft
20 complaint about Defendant’s unsafe work conditions and provided a response to the prior day’s
21 “corrective action.” Exhibit 2. The email ended, “this letter is to serve as my representation of the day in
22 question as I feel the details provided by Stephanie [Conrad] are inaccurate. My intention is always to
23 provide quality care in a safe manner to our patients.” Exhibit 2.

24 17. On November 17, 2023, Plaintiff emailed Human Resources again, but Plaintiff did not
25 receive any response and has no knowledge of any investigation being conducted by Defendant. Exhibit
26 3.

27 18. Other nurses, including Katrina Budnik (Exhibit 4) and Evelin Mendoza (Exhibit 5), have
28 resigned their employment with Defendant because of being forced to work in situations that are unsafe

1 to patients.

2 19. A contributing factor in Defendant's decision to terminate Plaintiff's employment was
3 Plaintiff's protected conduct, as alleged herein.

4 20. **Off-The-Clock Work.** Defendant failed to pay Plaintiff for all time worked. The off-the-
5 clock work included, among other things according to proof: working during breaks, such as carrying on
6 with work during a meal or rest break; and/or reviewing or responding to emails or texts from a mobile
7 device or after hours.

8 21. **Overtime Work.** Defendant failed to pay Plaintiff for work in excess of eight (8) hours in
9 a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular
10 rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
11 workweek, and for work in excess of twelve (12) hours in a day overtime compensation at a rate of two
12 (2) times the regular rate of pay.

13 22. **Regular Rate of Pay.** Defendant failed to calculate Plaintiff's "regular rate" for overtime
14 purposes in the proper manner by failing to include commission and other wages paid to Plaintiff outside
15 of the hourly rate, leading to an underpayment of wages owed.

16 23. **Combining Meal And Rest Breaks.** Defendant required Plaintiff to take statutory rest
17 breaks with Plaintiff's statutory meal break, effectively combining the three breaks into a single break.

18 ///

19 24. **Meal Break Violations.** Defendant failed to provide Plaintiff with first or second timely,
20 uninterrupted 30-minute meal break as required by law, according to proof. For instance, among other
21 things according to proof: Plaintiff did not get meal breaks at all; Plaintiff was forced to work throughout
22 Plaintiff's meal breaks; Plaintiff was "on-call" during meal breaks; Defendant automatically deducted
23 unpaid meal break time from Plaintiff's time worked even though Plaintiff performed work during such
24 time; Defendant rounded Plaintiff's clock in and out times for the start and end of meal breaks; Plaintiff's
25 meal breaks were not timely; Plaintiff's meal breaks were interrupted; and/or Plaintiff's meal breaks were
26 less than the full 30 minutes.

27 25. Defendant has engaged in a company-wide practice and/or policy to not pay meal break
28 premiums owed when compliant meal breaks are not provided. If and when Defendant did attempt to pay

meal break premiums owed when compliant meal breaks were not provided, Defendant paid at less than the legally required rate of pay. Defendant, therefore, failed to provide Plaintiff compliant meal breaks and failed to pay the full meal break premiums due.

26. **Rest Break Violations.** Defendant failed to authorize and permit Plaintiff to take a 10-minute rest break per each four (4) hour period worked or a major fraction thereof, according to proof. For instance, among other things according to proof: Plaintiff did not get rest breaks at all; Plaintiff was forced to work throughout Plaintiff's rest breaks; Plaintiff was "on-call" during rest breaks; Plaintiff's rest breaks were not timely; Plaintiff's rest breaks were interrupted; Plaintiff's rest breaks were less than the full 10 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during rest breaks.

27. Defendant's labor budget policies and resultant understaffing prevented Plaintiff from being relieved of all duties to take compliant rest breaks. Defendant had no policy of scheduling rest breaks for employees, which further impeded and prevented Plaintiff from taking rest breaks. As a result of Defendant's understaffing and failure to schedule rest breaks, Plaintiff worked shifts in excess of 3.5 hours, in excess of six (6) hours, and in excess of 10 hours without receiving all uninterrupted 10-minute rest breaks to which Plaintiff was entitled.

28. Defendant has engaged in a company-wide practice and/or policy to not pay rest break premiums owed when compliant rest breaks are not provided. If and when Defendant did attempt to pay rest break premiums owed when compliant rest breaks were not provided, Defendant paid at less than the legally required rate of pay. Defendant, therefore, failed to provide Plaintiff compliant rest breaks and failed to pay the full rest break premiums due.

29. **Wage Statements.** Defendant knowingly and intentionally failed to provide Plaintiff with uniform, complete, and accurate wage statements because the wage statements provided to Plaintiff failed to list the: accurate totals of the hours worked; number of hours worked at each hourly rate; net wages earned; and/or gross wages earned.

30. **Final Pay.** Defendant failed to pay Plaintiff all wages owed to Plaintiff immediately upon Plaintiff's termination of employment, including earned and unpaid wages, such as: minimum wages; overtime wages; meal and rest period premium wages; and/or all wages owed for the final day of work.

Defendant did not provide Plaintiff with her final pay check until December 1, 2023, weeks after her termination.

FIRST CAUSE OF ACTION

**PAGA REPRESENTATIVE ACTION FOR PENALTIES PURSUANT TO
LABOR CODE SECTION 2698**

31. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

32. Under the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698-2699.5, private parties may recover civil penalties for violations of the Labor Code. These penalties are in addition to any other relief available under the Labor Code. As set forth above, Defendant has committed numerous violations of the Labor Code against Plaintiff, including but not limited to:

- **Labor Code §§ 201, 201.5, 202, 203.** Failure to pay all wages immediately upon termination or within 72 hours after notice of separation.
- **Labor Code § 204.** Failure to pay all earned wages within the time prescribed in Labor Code §§ 204(a) and 204(b).
- **Labor Code § 206.** Failure to pay all undisputedly owed wages.
- **Labor Code § 210.** Failure to pay wages as required by Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 227.3, and/or 1197.5.
- **Labor Code § 212.** Failure to include the name and address of established place of business in the state on pay checks to cash or deposit pay checks.
- **Labor Code § 213.** Unauthorized payment of final wages via direct deposit.
- **Labor Code § 221.** Failure to not collect and receive owed wages.
- **Labor Code § 226.** Failure to provide timely and accurate wage statements.¹
- **Labor Code § 226.3.** Failure to comply with Labor Code § 226(a).
- **Labor Code § 226.7.** Failure to provide rest periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the rest periods.
- **Labor Code §§ 226.7 and 512.** Failure to provide meal periods and failure to provide an

¹ *Bernstein v. Virgin America, Inc.*, 3 F.4th 1127 (9th Cir. 2021) (awarding nearly \$4.4 million in statutory Labor Code § 226 penalties and an additional \$5 million in PAGA civil penalties for Labor Code § 226 violations).

additional hour of pay at the regular rate of compensation in lieu of the meal periods.

- **Labor Code § 256.** Failure to pay all wages immediately upon termination or within 72 hours after notice of separation.
- **Labor Code §§ 510 and 1194.** Failure to pay overtime and double time compensation.
- **Labor Code §§ 510, 1194, 1194.2, and 1197.** Failure to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
- **Labor Code § 558.** Violation of a section of the chapter of the Labor Code starting with Labor Code § 500, *et seq.*, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission.
- **Labor Code § 558.1.** Violation any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, and violating Labor Code §§ 203, 226, 226.7, 1193.1, and/or 1194.
- **Labor Code § 1174.** Failure to maintain compliant employee and payroll records.
- **Labor Code § 1197.1.** Failure to pay minimum wage.
- **Labor Code § 1199.** Violation of an order of the Industrial Welfare Commission.
- **Labor Code § 1198.** Violation of the following sections of orders of the Industrial Welfare Commission for conditions of labor prohibited by such:
 - **Wage Order 1-2001 (or other applicable Wage Order), Section 3,** requiring an employer to pay overtime and double time compensation.
 - **Wage Order 1-2001 (or other applicable Wage Order), Section 4,** requiring an employer to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
 - **Wage Order 1-2001 (or other applicable Wage Order), Section 7,** requiring an employer to maintain accurate information with respect to each employee; provide employees with thorough and accurate itemized wage statements; and, provide clocks within a reasonable distance from employees' work areas.
 - **Wage Order 1-2001 (or other applicable Wage Order), Section 11,** requiring an employer to provide its employees with adequate meal periods and an additional hour of

pay at the regular rate of compensation in lieu of the rest periods.

- **Wage Order 1-2001 (or other applicable Wage Order), Section 12**, requiring an employer to provide its employees with adequate rest periods and an additional hour of pay at the regular rate of compensation in lieu of the rest periods

33. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code section 2699(c), and a proper representative to bring a civil action on behalf of Plaintiff and other current and former employees of Defendant pursuant to the procedures specified in California Labor Code section 2699.3, because Plaintiff is employed by Defendant and the alleged violations of the California Labor Code were committed against Plaintiff.

34. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice on January 18, 2024, by online filing to the California Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. More than 65 days have passed since Plaintiff provided written notice to the LWDA. The LWDA has not provided notice that it intends to investigate PLAINTIFF’S claims.

35. Pursuant to California Labor Code section 2699.3, Plaintiff served Defendant with the aforementioned LWDA notice via certified mail on January 19, 2024. More than 33 days have passed since that date. Defendant has not provided Plaintiff with notice that it cured any of the violations alleged therein.

36. Per the tolling provision in Labor Code section 2699.3(g), the period of liability under Plaintiff’s PAGA claim extends one year and sixty-five days before the filing of this complaint (the “PAGA Liability Period”).

37. Accordingly, Plaintiff has complied with all of the requirements set forth in California Labor Code section 2699.3 to commence a representative action under PAGA.

38. Pursuant to PAGA, Plaintiff seeks civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to the California Labor Code, including California Labor Code sections 2699(a) and 2699(f), which provides for \$100 for each initial violation and \$200 for each subsequent violation per employee pay period. In addition, pursuant to PAGA,

1 Plaintiff seeks to recover civil penalties, including but not limited to penalties under Labor Code sections
2 210, 225.5, 226.3, 558, 1174.5, 1197.1, and 1199 from Defendant in a representative action for the
3 violations set forth above. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant
4 to Labor Code section 2699(g)(1).

5 **JURY TRIAL DEMANDED**

6 Plaintiff demands a jury to the extent a jury is available/permitted for PAGA claims.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

- 9 a. For penalties;
- 10 b. For prejudgment interest pursuant to California Labor Code section 218.6, California
11 Civil Code section 3287 and/or California Civil Code section 3288 and/or any other
12 provision of law providing for prejudgment interest;
- 13 c. For attorneys' fees;
- 14 d. For costs of suit incurred herein; and
- 15 e. For such other and further relief as deemed just and proper.
- 16

17 DATED: March 26, 2024

COLBY LAW FIRM, PC

18 

19 By: _____

20 AARON N. COLBY

21 ZOE YUZNA

22 Attorneys for Plaintiff

23 VERONICA PADILLA

24

25

26

27

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EXHIBIT 1

On 10/24, Veronica came into the DON's office to discuss the OR cases for the next day. When Veronica was encouraged that everything would be fine and the cases could be done, she continued to say no. On 10/25, when Veronica and the DON were working together, Veronica refused to do any tasks that day that were asked of her. She made it very clear that she would only remain in the PACU. Veronica remained in the PACU while the DON performed all other tasks for the ORs. Veronica failed to complete all PACU tasks, such as changing out the O2 masks and suction, and cleaning the PACU bays and getting the bed's ready. Veronica has had a history of telling her supervisor no when she does not want to do a task. She informed her supervisor on an occasion that she would refuse to take care of a patient if they were rescheduled because the parent was difficult. Veronica often displays a negative attitude when she does not like the tasks or workload of the day. There was a mandatory all staff meeting on 10/31 that she was informed of and was asked to attend and did not attend even though she did not have a patient under her care.

Blue Cloud Pediatric Surgery Centers, LLC.
Associate Corrective Action Form

Associate Name: Veronica Padilla

Date: 11/3/2023
Supervisor: Stephanie Conrad

Job Title: RN

Level of Corrective Action -

Counseling

☒ Written Warning

Written Warning w/Probation

Suspension w/o Pay

Termination

Facts:	See attached.
Objective:	Veronica, on multiple occasions, has refused tasks asked of her by her supervisor. She has a negative attitude when she does not want to perform tasks. Veronica does not attend all mandatory meetings asked by her supervisor. Veronica has refused patient care.
Solution(s):	Veronica will follow respectful and professional communication. Any further insubordination will result in termination.
Action Taken:	Written warning.
Associate's Comments:	

I acknowledge receipt of this corrective action and that its contents have been discussed with me. I understand that either failure to improve my performance/behavior or additional incidence/s of any unsatisfactory performance or behavior may result in further corrective action up to and including termination. I understand that my signature does not necessarily indicate agreement.

Associate Signature:

Date:

Supervisor Signature:

Date:

HR Manager Signature:

Date:

A copy of this corrective action will be placed in your personnel file for reference.

Original: Human Resources

Copy: Associate's Dept File

Copy: Associate

EXHIBIT 2



From veronica padilla vpad9139@gmail.com

To hr@bluecloudpsc.com

Date Nov 16, 2023 at 3:59 PM

11/15/23

I am writing to you regarding associate corrective action form, written against me. I'd like to share what happened on 10/24. I had concerns for the OR full schedule on 10/25, only 2 nurses were staffed to work that day. I wanted to talk to Stephanie about my concerns, if there was a possibility to lighten up the load, or go down to 1 OR as staffing was an issue and (working under unsafe conditions for patients). Basically I wanted to talk to her to come up with a plan for the next day as I was very concerned for pt safety. She proceeded to raise her voice, tell me "No, it's only you and I and to get out of my room". After a coworker walked into the room, I was kicked out of her room. Still concerned about the next scheduled day. I talked to anesthesia provider and came up with a plan to recover pt in PACU all day. I wanted to report her to HR that day for her behavior, she belittled me, ignored my concerns and raised her voice. I have never been so disrespected from a supervisor like she did. I wasn't actually able to open up my concerns. She wrote to me on teams later that day asking if I still wanted to talk, I didn't see it until I was done for the day at 6:17 pm, after a long 12 hour shift. The next day she proceeded to approach me in the morning asked "If I was okay, or we were okay, and I asked her "What do you mean, what are you talking about"?, and she proceed to raise her voice and aggressively with attitude stated "You know what I'm



she proceeded to approach me in the morning asked” If I was okay, or we were okay, and I asked her “What do you mean, what are you talking about”?, and she proceed to raise her voice and aggressively with attitude stated “You know what I’m talking about” I felt very uncomfortable then and let her know that I wish we had talked earlier the day before about today and my concerns and let her know that after talking to our anesthesia provider it was best for me to stay in PACU all day. Since this day, Stephanie has not communicated with myself or nursing staff. It has been a hostile work environment.

Stephanie commented on her report that I refused to do any tasks that day that were asked of me. The only tasks I was unable to do was to work up a spanish speaking patient. As soon as I was done recovering and discharging my patient I took over Stephanie’s patient as stephanie can use translating services and I was scheduled to PACU all day.

1. Stephanie falsely stated that she performed all the tasks in the OR. That day, those preops were half way done, pt were not educated on post op instructions, and most cases were without a nurse. Most cases IV’s were started by anesthesia providers including a dentist. Documentations were done as if she was present during the room, count were being verified and intubation times recorded as she was not in the OR room and instead talking to the next patient being worked up. This was a very false statement, she was doing workups and that was it. She fully recovered one patient, all other patients I started and or took over care.



4. She falsely stated I often display a negative attitude when I do not like the tasks or workload for the day. I can proudly say I can have people vouch for how positive I am throughout the day and try to improve employee morale. I have never displayed this attitude towards her. There must be a confusion, speaking up about unsafe work environments is not being negative, its being safe and always speaking up for pt safety.
5. Stephanie stated there was a mandatory all staff meeting that I was aware of and asked to attend and did not attend. Once again, Stephanie falsely stated this as I was already in the meeting during which we started with a Malignant Hyperthermia code and our cardiac arrest code. The meeting took place in PACU, I was actively involved in the code, once the code finished myself and my coworker fellow nurse were actively asking questions regarding code and medications pertaining to code and working on drawing up medications, dantrolene and epinephrine. I had to appropriately dispose of these medications and also clean up the PACU bay from the code we just had. Once I finished up the meeting was over. None of the nurses were included in this meeting. This is the second meeting that was in the middle of nowhere, no appropriate seating, or timing. Stephanie did not approach the nurses about what was missed on the second part of the meeting.

10/25 was one of the most difficult shifts I have ever had since working at TCDCSC. I almost worked 14



and also clean up the PACU bay from the code we just had. Once I finished up the meeting was over. None of the nurses were included in this meeting. This is the second meeting that was in the middle of nowhere, no appropriate seating, or timing. Stephanie did not approach the nurses about what was missed on the second part of the meeting.

10/25 was one of the most difficult shifts I have ever had since working at TCDSC, I almost worked 14 hours that day, no appropriate breaks or lunch. I was back to back from one patient to another, until I clocked out at 7:30 pm that night. I work with some very great nurses and staff that have been supportive. I know that each and everyone of our staff involved that day can vouch for me. I have never in my life, have been so disrespected and been falsely talked about in my professional career.

In summary, this letter is to serve as my representation of the day in question as I feel the details provided by Stephanie are inaccurate. My intention is always to provide quality care in a safe manner to our patients.

Sincerely

Veronica Padilla
Registered Nurse

← Reply

→ Forward

EXHIBIT 3

3:46

LTE



HR

Inbox



me Nov 17

to hr ▾



I'd like to talk to someone from HR regarding my unfair and hostile treatment by my supervisor and HR coordinator. Can someone call me that is not Rachel.

559-916-7164

Thank you,

Kindest regards



Nalani Braun Nov 17

to me ▾



Good morning Veronica,

My name is Nalani Braun, and I am the People Operations Manager with Blue Cloud. I'm aware of the situation below and will be able to address with you. I'm currently away from the office working remotely in a non-private setting. Would I be able to schedule a call with you later this afternoon? Would a time between 1:00 and 2:00pm work for you?

Thank you for reaching out to HR and wanting

EXHIBIT 4



K



Katrina Budnik Work >

After the last time I was there and saw how it was and what an unsafe environment it was I made the decision that I will never go back there. The extra money is not worth risking my license. Honestly Vero, this is probably a blessing in disguise and I highly suggest that you get yourself an attorney because the things that they are doing within the bluecloud system is not legal.

Like I was saying last time, them not compensating you for not taking 15 minute breaks when you work 12 hour days or even an 8 hour shift is against the law. The fact that you guys sometimes can't take your breaks until you've been there 6-7 hours is against the law. You should be given a lunch break at 5 hours or you should get compensated for not being able to. There are so many things that they do illegally.



iMessage





K



Katrina Budnik Work >

I am definitely getting a lawyer. I already inquired and wil continue to do so tomorrow. And yes so unsafe! And man it hurts so much that I thought I was being good by advocating

And upon reading the paragraph of events for why you refused to help was valid on your behalf . You had legitimate concerns about patient safety and your license. She knows really nothing about PACU and it is unsafe for her to even take kiddos in the PACU to be honest. If nothing else, you did her a solid because what if a kid laryngospasm and bronchospasm. I highly doubt she would know what to do. She is qualified maybe to stay in the office and push papers but, completely unqualified to recover a patient or be in the OR.

11/15/23

I am writing to you regarding associate corrective action form, written against me. I'd like to



iMessage





K



Katrina Budnik Work >

You had legitimate concerns about patient safety and your license. She knows really nothing about PACU and it is unsafe for her to even take kiddos in the PACU to be honest. If nothing else, you did her a solid because what if a kid laryngospasm and bronchospasm. I highly doubt she would know what to do. She is qualified maybe to stay in the office and push papers but, completely unqualified to recover a patient or be in the OR.

11/15/23

I am writing to you regarding associate corrective action form, written against me. I'd like to share what happened on 10/24. I had concerns for the OR full schedule on 10/25, only 2 nurses were staffed to work that day.... >

Veronica, I 100 have your back. If they need more voices, I am happy to help be a voice.



iMessage



EXHIBIT 5

December 12, 2023

Dear Blue Cloud Team,

This letter is to bring to your attention the recent experiences that I had at the Visalia, CA location that drove me to resign.

I have encountered changes to my work schedule without prior communication from my supervisor. This has created challenges in planning and has affected my ability to meet both professional and personal commitments. Clear communication regarding schedule changes is crucial for effective coordination and productivity. I understand that adjustments may be necessary at times, but I believe a proactive and transparent approach would greatly contribute to a more efficient work environment.

Our supervisor has been scheduling meetings during times that directly coincide with patient care responsibilities. The overlap has led to challenges in balancing our commitment to providing quality patient care while fulfilling our responsibilities to attend team meeting. This situation not only poses a risk to patient care but also places undue stress on the team as we strive to meet both sets of obligations simultaneously. I understand the importance of team communication and collaboration but believe it is crucial to find balance that ensures patient care remains our top priority.

In recent weeks, the nursing staff has been operating with fewer nurses than required, leading to challenges in maintaining the high standards of care we aim to deliver. It has been challenging to receive support and assistance from our supervisor. This shortage has resulted in increased workloads, stress levels, and regrettably, instances where we may have fallen short of providing the optimal patient experience. The increase workload due to the staff shortage has made it difficult for the nurses to take breaks and lunches as designated in our workplace policies. While we understand the demands of the current situation, it is becoming increasingly challenging for us to manage our work effectively without adequate time for rest and rejuvenation. The current situation is affecting both the well-being of the team and the quality of care we can offer to our patients.

On several occasions, various team members, including myself have communicated concerns and feedback to our supervisor, but unfortunately, we have not witnessed the desired follow-up or resolution. This lack of acknowledgment and action has led to frustration and sense of disconnection within the team. Patient safety is a top priority for all of us, and when staff members bring forth valid concerns, it is imperative that they are addressed promptly and comprehensively.

To ensure that we continue to meet Blue Clouds vision to be the leaders in safety and quality for our pediatric dental surgery patients, I kindly urge you to investigate and take appropriate action.

Thank you for your attention to this critical issue,
Evelin Mendoza, RN