

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

Victoria Rivapalacio (State Bar #275115)

victoria@bamlawca.com

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

E-FILED

10/7/2024 11:31 AM

Clerk of Court

Superior Court of CA,

County of Santa Clara

24CV449120

Reviewed By: C. Roman

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

KATERINA JONES and BAILEY KILMER,
on behalf of the State of California, as private
attorneys general,

Plaintiffs,

vs.

KBI SERVICES, INC., a Corporation;
FAHIMEH SASAN, D.O., P.C., a
Professional Corporation; and DOES 1
through 50, inclusive,

Defendants.

24CV449120

Case No. _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204, 210, 218,
221, 226(a), 226.7, 227.3, 246, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2100, 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 Katerina Jones and Bailey Kilmer (“PLAINTIFFS”), on behalf of the people
2 of the State of California and as “aggrieved employees” acting as private attorney generals
3 under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only,
4 allege on information and belief, except for their own acts and knowledge which are based on
5 personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against defendants KBI Services, Inc. and Fahimeh
8 Sasan, D.O., P.C. (referred to as “DEFENDANT”) seeking only to recover PAGA civil
9 penalties on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFFS do **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA which permits PLAINTIFFS to bring an action
16 on behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise
17 and sole nature of this action.

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

23 4. PLAINTIFFS are not suing in their individual capacity; they are proceeding
24 herein solely under the PAGA, on behalf of the State of California for all aggrieved employees,
25 including themselves and other aggrieved employees. Nothing in this complaint should be
26 construed as PLAINTIFFS suing in their individual capacity.

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

$$\begin{matrix} 2 \\ 3 \end{matrix}$$
4
5

6
7
8
9

O

- 1
- 2
- 3
- 4
- 5

6
7
8
9
20

21
22
23
24
25
26
27
28

1 12. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
2 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
3 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
4 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204, 210, 218, 221,
5 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100, 2802,
6 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
7 Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the
8 applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED
9 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

10 13. The true names and capacities, whether individual, corporate, subsidiary,
11 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
12 presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious
13 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
14 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
15 they are ascertained. PLAINTIFFS are informed and believe, and based upon that
16 information and belief allege, that the Defendants named in this Complaint, including DOES
17 1 through 50, inclusive, are responsible in some manner for one or more of the events and
18 happenings that proximately caused the injuries and damages hereinafter alleged.

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

27 ///

28 ///

THE CONDUCT

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFFS and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

16. State law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and the

1 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
2 tied to specific elements of an employee's performance.

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

18 18. As a result of their rigorous work schedules, PLAINTIFFS and the
19 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
20 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS
21 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
22 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
23 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and
24 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
25 which these employees were required by DEFENDANT to work ten (10) hours of work.
26 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
27 paying penalties to PLAINTIFFS and the AGGRIEVED EMPLOYEES. PLAINTIFFS and
28

1 the AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional
2 compensation and in accordance with DEFENDANT's corporate policy and practice.

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

24 20. During the PAGA PERIOD, DEFENDANT failed to accurately record and
25 pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these
26 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
27 DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for
28 all time worked, meaning the time during which an employee was subject to the control of

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

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

1 time to time provided PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage
2 statements which violated Cal. Lab. Code § 226.

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

7 in [I]n addition to, and entirely independent and apart from, any other penalty provided
8 this article, every person who fails to pay the wages of each employee as provided in
9 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
10 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

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

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

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

26 26. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
27 at the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely
28 earned non-discretionary incentive wages which increased their regular rate of pay.

1 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and
2 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
3 required under Cal. Lab. Code Section 246.

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

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

18 29. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
19 PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred
20 by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of
21 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
22 2802, employers are required to indemnify employees for all expenses incurred in the course
23 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
24 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
25 employee in direct consequence of the discharge of his or her duties, or of his or her
26 obedience to the directions of the employer, even though unlawful, unless the employee, at
27 the time of obeying the directions, believed them to be unlawful."
28

1 30. In the course of their employment PLAINTIFFS and the AGGRIEVED
2 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
3 personal cellular phones and home offices as a result of and in furtherance of their job duties
4 as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT
5 for the cost associated with the use of their personal cellular phones and home offices for
6 DEFENDANT's benefit. Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES
7 were required by DEFENDANT to use their personal cellular phones and home offices. As
8 a result, in the course of their employment with DEFENDANT, PLAINTIFFS and the
9 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
10 were not limited to, costs related to the use of their personal cellular phones and home
11 offices all on behalf of and for the benefit of DEFENDANT.

12 31. In violation of the applicable sections of the California Labor Code and the
13 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
14 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
15 knowingly and systematically failed to provide PLAINTIFFS and the other AGGRIEVED
16 EMPLOYEES suitable seating when the nature of these employees' work reasonably
17 permitted sitting.

18 32. DEFENDANT knew or should have known that PLAINTIFFS and other
19 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
20 when it did not interfere with the performance of their duties, and that DEFENDANT did
21 not provide suitable seating and/or did not allow them to sit when it did not interfere with
22 the performance of their duties.

23 33. By reason of this conduct applicable to PLAINTIFFS and all AGGRIEVED
24 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
25 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFFS seek penalties
26 on behalf of PLAINTIFFS and other AGGRIEVED EMPLOYEES as provided herein.
27 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's
28

1 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
2 California Labor Code and regulations promulgated thereunder as herein alleged.

3 34. The employment of some AGGRIEVED EMPLOYEES has terminated and
4 DEFENDANT has not tendered payment of all wages owed as required by law.
5 Additionally, at all times during the term of PLAINTIFFS' employment with
6 DEFENDANT, AGGRIEVED EMPLOYEES earned and accrued vested vacation and
7 holiday time on the date of their termination pursuant to DEFENDANT's uniform vacation
8 policies and applicable California law. The amount of vacation pay PLAINTIFFS and the
9 other AGGRIEVED EMPLOYEES earned and accumulated is evidenced by
10 DEFENDANT's business records. Additionally, DEFENDANT also underpaid accrued
11 vested vacation wages to AGGRIEVED EMPLOYEES by failing to pay such wages at the
12 regular rate of pay and more specifically the final rate of pay that included all non-
13 discretionary incentive compensation. Rather than pay vacation wages at the regular rate of
14 pay, DEFENDANT underpaid vacation wages to AGGRIEVED EMPLOYEES at their base
15 rates of pay, instead of including all of the AGGRIEVED EMPLOYEES' non-discretionary
16 incentive compensation into the vacation wage payment calculations. DEFENDANT failed
17 to specify in DEFENDANT's written vacation policy the rate at which PLAINTIFFS and
18 other AGGRIEVED EMPLOYEES would be paid vacation upon leaving employment with
19 DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and procedure to
20 deny paying AGGRIEVED EMPLOYEES all of their vested vacation and holiday time,
21 DEFENDANT failed to pay AGGRIEVED EMPLOYEES all vested vacation time as wages
22 due upon employment termination, in violation of the California Labor Code, Sections 201,
23 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to
24 AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of the
25 AGGRIEVED EMPLOYEES' non-discretionary compensation into the waiting time penalty
26 calculations. This failure by DEFENDANT is believed to be the result of DEFENDANT's
27 unlawful, unfair and deceptive refusal to provide compensation for earned, accrued and
28 vested vacation and holiday time, as well as the corresponding waiting time penalties that

1 were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive practice to the
2 detriment of AGGRIEVED EMPLOYEES. DEFENDANT's uniform practice and policy of
3 failing to pay AGGRIEVED EMPLOYEES for all vested vacation and holiday time
4 accumulated at employment termination violated and continues to violate Section 227.3 of
5 the California Labor Code.

6
7 **JURISDICTION AND VENUE**

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

10 36. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
12 employs AGGRIEVED EMPLOYEES across California, including in this County, and
13 committed the wrongful conduct herein alleged in this County against AGGRIEVED
14 EMPLOYEES.

15 **FIRST CAUSE OF ACTION**

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

17 **[Cal. Lab. Code §§ 2698]**

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

19 37. PLAINTIFFS reallege and incorporate by this reference, as though fully set
20 forth herein, the prior paragraphs of this Complaint.

21 38. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
23 the state's labor law enforcement agencies. An action to recover civil penalties under
24 PAGA is fundamentally a law enforcement action designed to protect the public and not to
25 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
26 but to create a means of "deputizing" citizens as private attorneys general to enforce the
27 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
28 public interest to allow aggrieved employees, acting as private attorneys general to recover

1 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

3 39. PLAINTIFFS, and such persons that may be added from time to time who
4 satisfy the requirements and exhaust the administrative procedures under the Private
5 Attorney General Act, bring this Representative Action on behalf of the State of California
6 with respect to themselves and all individuals who are or previously were employed by KBI
7 Services, Inc. and/or Fahimeh Sasan, D.O., P.C. in California, including any employees
8 staffed with KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. by a third party, and
9 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time
10 period of June 28, 2023 until a date as determined by the Court (the "PAGA PERIOD").

11 40. On June 28, 2024, PLAINTIFFS gave written notice by electronic mail to the
12 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
13 employer of the specific provisions of this code alleged to have been violated as required by
14 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
15 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
16 PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
17 Section 2699.3, PLAINTIFFS may now commence a representative civil action under
18 PAGA pursuant to Section 2699 as the proxies of the State of California with respect to all
19 AGGRIEVED EMPLOYEES as herein defined.

20 41. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
22 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
23 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
24 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
25 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
26 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
27 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197,
28 1197.1, 1198, 2100, 2802, California Code of Regulations, Title 8, Section 11040,

1 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure
2 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
3 penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of only civil
4 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
5 representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS
6 and the AGGRIEVED EMPLOYEES.

7 **PRAYER FOR RELIEF**

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

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

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

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

16 Dated: October 7, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
17 LLP

18 By: /s/ Nicholas 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).

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

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

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

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

June 28, 2024
CA3330

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

KBI Services, Inc.
Certified Mail #9589071052702163358186
Cogency Global Inc.
1325 J. Street, Suite 1550
Sacramento, CA 95814

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 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 Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. in California, including any employees staffed with KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. by a third party, and classified as non-exempt employees during the time period of June 28, 2023 until a date as determined by the Court. Our offices represent Plaintiffs Katerina Jones and Bailey Kilmer (“Plaintiff”) and other Aggrieved Employees in a lawsuit against KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. (“Defendant”). Plaintiff Jones has been employed by Defendant in California since November of 2023. Plaintiff Kilmer has been employed by Defendant in California since February 2024. Plaintiffs have been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. 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, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by 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 incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable 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 Statue of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw
Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

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

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

June 28, 2024
CA3330

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Fahimeh Sasan, D.O., P.C.
Certified Mail #9589071052702163358179
Cogency Global Inc.
Erin Haggerty
1325 J. Street, Suite 1550
Sacramento, CA 95814

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. in California, including any employees staffed with KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. by a third party, and classified as non-exempt employees during the time period of June 28, 2023 until a date as determined by the Court. Our offices represent Plaintiffs Katerina Jones and Bailey Kilmer (“Plaintiff”) and other Aggrieved Employees in a lawsuit against KBI Services, Inc. and/or Fahimeh Sasan, D.O., P.C. (“Defendant”). Plaintiff Jones has been employed by Defendant in California since November of 2023. Plaintiff Kilmer has been employed by Defendant in California since February 2024. Plaintiffs have been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. 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, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by 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 incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable 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 of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw
Nicholas J. De Blouw, Esq.