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January 8, 2020

VIA ONLINE FILING ONLY:

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Corporation Service Company Which Will Do
Business in California as CSC – Lawyers
Incorporating Service
Agent for Service of Process for Service of Process
for: Cabinets To Go, LLC
ATTN to the following Employees Authorized to
Accept Service: Annette Kuhlman, Becky
DeGeorge, Bill Jacobs, Carolyn Valle, Catherine
Webb, Denise Hohenhaus, Dona Niemeyer, Fanny
Xiong, Janette McIntyre, Jeanne, Zhen, Jerome,
Suarez, Kaci Ransom, Kaitlyn Mannix, Karen Rose,
Karissa Lowry, Kelli Shortte, Mai Yang, Melissa
Brodnik, Melissa DeKoven, Melissa Vang, Nicole
Chambers, Orion Rose, Roxie Taylor, Samantha
Alterman, Sandy Farneth, Selena Raptis, Shellie
Smith, Sherie Hinton, Sierra Hinkle, Steve Cassidy,
Tanisha Davis
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Cabinets To Go, LLC

2350 WO Smith Drive
Lawrenceburg, TN 38464

Avi Cohen, Chief Financial Officer/Managing
Agent for Cabinets To Go, LLC
2350 WO Smith Drive
Lawrenceburg, TN 38464

Subject: *Elaine Moyal, on behalf of herself and all similarly situated aggrieved employees v. Cabinets To Go, LLC, et al. Cal. Labor Code sections 2699.3 Notice of Labor Code Violations*

Dear LWDA PAGA Administrator and above-named entity and individual:

This office represents Complainant Elaine Moyal (hereinafter “Complainant”) in connection with her claims under the California Labor Code. Complainant was, at all relevant times herein mentioned, an employee of the above-named entities and individual managing agents of said entities (hereinafter to be collectively referred to as “Employer”).

Employer may be contacted directly at the above addresses. Pursuant to California Labor Code sections 2699.3 and 2699.5, Complainant, on behalf of herself, and on behalf of similarly situated aggrieved current and former employees of Employer, hereby gives written notice (“Notice”) of her claims against Employer. This Notice is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and Employer via its Agent(s) for Service of Process. This Notice also serves to demonstrate Complainant’s reasonable attempt at settlement with Employer. If Employer is interested in settling this matter before a lawsuit is filed, Employer may contact Crosner Legal, P.C. at the address listed at the close of this notice. This settlement attempt is in compliance with relevant California law. *Graham v. DaimlerChrysler Corp.* (2004) 24 Cal.4th 553, 561.

This letter is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This letter further reserves any and all rights by Complainant to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Employer is on notice that Complainant continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If Employer

intends to cure the alleged violations within the statutory time period set forth in §§ 2699 and 2699.3(a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to section 2699.

Based on the following summary of the facts and theories upon which Complainant will base her claims, Complainant requests that the LWDA regard this Notice as written notice of her intent to seek civil penalties against Employer. The specific provisions of the California Labor Code that Employer has violated requiring this notice include but are not limited to California Labor Code sections 98.6, 201-202, 204, 216, 221-223, 226, 226.7, 226.8, 245-248.5, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1024.5, 1102.5, 1174, 1194, 1197, 1198, 1199, 2751, 2810.5 and all applicable wage orders. These violations subject Employer to civil penalties as set forth in including but not limited to (1) the foregoing statutes, (2) Labor Code sections 203, 210, 225.5, 226.3, 256, 558, 558.1, 1174.5, 1194.2, 1197.1, and 2699, and (3) section 20 of all Applicable Wage Orders.

The Named Entities Are Joint Employers of Complainant and Aggrieved Employees

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

Complainant believes and hereon asserts that Employer and unknown entities must be classified as joint employers of Complainant for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted Complainant to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Complainant at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of Complainant and aggrieved employees, they are each liable for civil penalties for violation of the California Labor Code as to Complainant and other similarly aggrieved employees.

Individual Liability Under Labor Code Sections 558 and 558.1

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid

wages. (2) For each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.” Labor code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

In passing AB 588, the California legislature added Labor Code section 558.1. Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, and 1194. Employer, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Complainant and other similarly aggrieved employees rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “*a natural person* who is an owner, director, officer, or managing agent of the employer.” The “managing agent” definition mirrors that found in California’s punitive damages statute. (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, and 1194 as further described in detail below.

Complainant intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. Complainant will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. Complainant asks and demands that Employer to put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, Complainant also offers to Employer to place those individuals on notice if Employer voluntarily provides their contact information.

The Employer; Summary of Labor Code Violations

Employer owns, operates or otherwise manages a company that sells kitchen and bath cabinetry installation services. While Employer may be successful/may have a noble mission, Employer does not comply with California labor law. Among other things, Employer failed/fails to keep accurate and complete time records for employees; failed/fails to pay employees for all hours worked; failed/fails to pay employees at least the minimum wage for all hours worked; failed/fails to pay all overtime wages; failed/fails to provide employees with proper meal and rest breaks and/or compensate Complainant and similarly situated aggrieved employees an additional hour of premium pay for missed/improper meal and rest periods; failed/fails to pay all wages earned by employees on at least semimonthly paydays; refused/refuses to make and/or falsely denied the amount of payments due to employees; failed/fails to provide proper and accurate wage statements to employees; required/requires its employees to sign off on unlawful background checks; failed/fails to provide proper notices regarding employee pay;

retaliated/retaliates against employees for complaining to management about violations of the Labor Code; and failed/fails to pay employees all earned and unpaid wages upon separation of employment within the time limits prescribed by law. Further descriptions of the above-mentioned violations and others are explained below.

Complainant and the Aggrieved Employees

At all relevant times, Complainant worked for Employer as a non-exempt kitchen and bath design specialist, until the wrongful constructive termination of her employment, on July 12, 2019, at which time Employer failed to furnish Complainant with a final paycheck containing all her earned wages. From Complainant's date of hire on or about April 22, 2019, through the end of Complainant's employment, Complainant's typical schedule was eight (8) hours per day, five (5) days per week. During the relevant time period, Complainant was paid hourly for time counted by Employer as hours worked; Complainant was also entitled to commission pay. Throughout the relevant time period, Complainant and similarly aggrieved employees were denied their owed meal and rest periods/premium pay in lieu thereof, denied their earned overtime wages and minimum wages, denied their due commissions, and denied all earned wages upon separation of employment.

At all relevant times, Complainant was an aggrieved employee as defined in Labor Code §2699(c) ("any person who was employed by the alleged violator who was employed by the alleged violator and against whom one or more of the violations was committed"). She seeks recovery for the Labor Code violations set forth herein on behalf of herself and other current and former employees, including but not limited to: non-exempt security guards, and other similarly aggrieved employees who were employed by Employer in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and IWC Wage Order violations as Complainant.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 4-2001 (and all Applicable IWC Orders), section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, Employer has failed, and continues to fail, to keep the required time records. Employer has failed/fails to keep accurate and complete records showing total hours worked by each employee. Upon information and belief, Employer used a rounding system that as applied worked to detrimentally shave and round time off from Complainant and similarly situated aggrieved employees' workdays. Complainant alleges on information and belief that through the operation of Employer's rounding system, Complainant and aggrieved employees would systematically be deprived of

compensable time because the time recording system implemented by Employer would almost always, if not always, understate actual compensable work time due to the rounding. This time shaving, implemented by and through Employer's unlawful rounding policies and/or procedures, resulted in not only time recordkeeping violations but also violations of California's minimum and overtime wage laws.

Furthermore, Employer required Complainant and similarly aggrieved employees to perform a substantial amount of off-the-clock work per week – for example, Complainant and similarly aggrieved employees were not paid for their on-the-job drive time, nor was this time ever recorded.

Employer also failed to keep accurate and complete records of the start and stop times of all owed meal periods.

Employer's failure to keep "accurate and complete" payroll records for Complainant and similarly aggrieved employees violates Labor Code sections 1174, 1198, 1199, and Wage Order 4-2001 (And All Applicable IWC Orders), section 7. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code § 512; IWC Wage Order 4-2001 (and all applicable wage orders), § 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Id.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Id.*

Employers covered by Industrial Welfare Commission ("IWC") Wage Order 4-2001 (and all applicable wage orders) have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 4-2001 (and all applicable wage orders), § 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker*, 53 Cal.4th at 1052-1053, *citing* Wage Order § 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

¹ See Lab. Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code § 226.7; IWC Wage Order 4-2001 (and all applicable wage orders), § 11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"). *Brinker*, 53 Cal.4th at 1018.

Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainant and other similarly aggrieved employees with proper meal periods. Liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker*, 53 Cal.4th at 1053.

During the relevant time period, Complainant and similarly aggrieved employees typically worked eight-hour shifts and thus were entitled to one thirty-minute meal break before the end of the fifth hour of work. However, Employer failed to provide all due meal breaks and required Complainant and similarly aggrieved employees to work through their meal breaks. During at least part of the relevant time period, Employer would automatically deduct for meal breaks even though Complainant and similarly aggrieved employees were forced to work through/tend to customers during their purported meal breaks. Moreover, throughout the relevant time period, per Employer policy and practice, Complainant and similarly aggrieved employees were generally prohibited from leaving the worksite and were not relieved of their duties for purposes of taking their meal period periods. Furthermore, Employer did not pay premiums for these improper and missed meal breaks in violation of California law. *Brinker*, 53 Cal.4th at 1018.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 4-2001 (and all applicable wage orders), § 11(A) and (C). These violations subject Employer to civil penalties under Labor Code sections 558 and 2699, and Wage Order 4-2001 (and all applicable wage orders), § 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² Employer's failure to provide valid meal

² Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001 (and all applicable wage orders), § 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid") (emphasis added).

periods, results in further violations, such as violation of Labor Code section 1174 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. IWC Wage Order 4-2001, §12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code §226.7; IWC Wage Order 4-2001, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Employer did not properly authorize and provide Complainant and other aggrieved employees with appropriate rest periods at a rate of four hours or major fraction thereof. Per Employer's policy and practice, Complainant and other aggrieved employees were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Employer failed to maintain a company rest period policy compliant with California law and failed to provide Complainant and other aggrieved employees with proper rest periods. Notably, Employer, per policy and practice, required Complainant and similarly aggrieved employees to remain tethered to their work locations and rarely, if ever, relieved them of their job duties for purposes of taking a rest break. As noted, liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable wage orders requirements. *Brinker, supra*, 53 Cal.4th 1004.

Employer did not allow Complainant and other aggrieved employees to take proper rest breaks. Complainant and other aggrieved employees would not receive proper rest breaks, nor would they be separately compensated for said rest breaks in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 4-2001, §12(A). These violations subject Employer to civil penalties under Labor Code section 2699, and Wage Order 4-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); IWC Wage Order 4-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Minimum Wage Violations:

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

Employer failed to compensate Complainant and similarly aggrieved employees for all hours worked by, among other things, failing to compensate Complainant and similarly aggrieved employees for time worked during uncompensated meal periods and by using a rounding system that as applied worked to detrimentally shave and round time off from Complainant and similarly situated aggrieved employees' workdays. Complainant alleges on information and belief that through the operation of Employer's rounding system, Complainant and aggrieved employees would systematically be deprived of compensable time because the time recording system implemented by Employer would almost always, if not always, understate actual compensable work time due to the rounding. This time shaving, implemented by and through Employer's unlawful rounding policies and/or procedures, resulted in not only time recordkeeping violations but also violations of California's minimum and overtime wage laws.

These violations subject employer to civil penalties under Labor Code sections 1197.1 and Wage Order 1-2001 (And All Applicable IWC Orders), § 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code § 510; IWC Wage Order 4-2001, § 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

Employer violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by Complainant and similarly situated aggrieved employees and not paying proper overtime rates for all overtime worked. Based on Complainant and similarly aggrieved employees' regular work schedules, Complainant and similarly aggrieved employees

⁴ Labor Code § 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 1-2001 (And All Applicable IWC Orders), § 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid") (Emphasis added).

worked a significant amount of overtime each week for which they were not properly compensated.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 4-2001, § 12(A). These violations subject employer to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 4-2001, § 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, Employer failed to provide paid sick leave to Complainants and other similarly aggrieved employees, further failing to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Employer failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employee throughout the relevant time period. In addition, throughout the relevant time period, Employer failed to provide notice of the correct sick leave amount balance left for Complainants and aggrieved employees, and thus affecting their intelligent exercise of their paid sick leave. But for this failure, Complainants and other similarly aggrieved employees would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation. This illegal retention of paid sick leave is unlawful and Complainants seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of herself and all aggrieved employees.

An Employer is required to provide paid sick days in accordance to Labor Code Section 245 through 248.5. Employer failed to provide a Labor Code Section 2810.5 notice, putting Complainants on notice of her right to use paid sick leave. Employer failed to provide the posting required by these statutes, showing and demonstrating all of the following:

- (1) An employee is entitled to accrue, request, and use paid sick days.
- (2) The amount of sick days provided for by this article.
- (3) The terms of use of paid sick days.
- (4) That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 4-2001, § 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Moreover, in violation of Labor Code Section 247.5, Employer failed to maintain records documenting the hours worked and paid sick days accrued and used by employee, permitting the presumption that Complainant was entitled to the maximum number of hours accruable under this article at the time of her termination. Employer further failed to comply with Labor Code Section 246, that is, providing its employees with a 226 statement or separate writing containing amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays its period wages and provides a Labor Code Section 226 statement.

Adding further to injury, Employer unlawfully retained and continues to retain paid sick leave that should have been paid and wasn't as a result of its failure to properly institute a paid sick leave program. On information and belief, Complainant alleges that all of these practices were experienced and continue to be experienced by other similarly aggrieved employees. Complainant requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but wasn't, due to Employer's sole failure to institute such a paid sick leave entitlement/paid sick leave bank as required by California law.

Accordingly, Complainant and other similarly aggrieved employees are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. Complainant requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code Section 233 and 234, which incorporates the paid sick leave requirements.

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. Employer violated this section by failing to pay aggrieved employees an additional hour of pay for meal and rest periods not provided/valid, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject Employer to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁶

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, Employer willfully and systematically denied Complainant and other similarly aggrieved employees minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. Employer acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under

⁶ Labor Code § 210 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

California law. Thus, Employer paid Complainant and other similarly aggrieved employees lower wages than those they were entitled to while purporting that Complainant and other similarly aggrieved employees were properly paid. Complainant and other similarly aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due. Employer violated/violates this section by failing to pay aggrieved employees for all hours worked at the proper wage rate and by failing to pay aggrieved employees an additional hour of pay for each meal/rest period not provided/that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

Employer failed to provide an accurate and itemized statement containing, among other things, earned gross and net wages during the time period, total hours worked, and the proper applicable pay rate(s) for all hours worked. As a result of Employer's violations of various Labor Code and Wage Order provisions, as discussed herein, Employer failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code section 226, and therefore Employer violated section 226. Notably, Employer's wage statements show the incorrect total hours as they include the payout of uniform hours as part of the total hours. These violations subject Employer to civil penalties under Labor Code sections 226.3. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁸

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

⁸ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Employer's violations with respect to meal periods, rest periods, recordkeeping provisions, and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

Failure to Provide Commission Agreements: Labor Code Section 2751 requires that all commission contracts "be in writing and . . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code § 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract from each employee." Id. § 2751(b). It also provides that, where the parties continue to work under the terms of an expired contract, "the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party." Id. The stated purpose for amending Section 2751 was to "protect employees from fraud and abuse, as well as protect employers from unnecessary litigation resulting from vague oral contracts." Hearing on AB 1396 Before the S. Comm. on Labor and Industrial Relations, 2011-2012 Sess. (Cal. 2011).

Complainant alleges that she, along with similarly situated aggrieved employees, were not provided with proper commission agreements in violation of Labor Code Section 2751.

Background Check Violations:

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code Section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code §1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. § 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, as well as proper notice of adverse actions taken, among other statutory requirements.

Upon information and belief, Employer required Complainant and other aggrieved employees to submit to an unlawful criminal and/or financial background check as a condition of obtaining and/or holding employment in violation of Labor Code Section 1024.5. Labor Code Section 432.7. Employer also required Complainant and other aggrieved employees to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code §1786, et seq. and 15 U.S.C. § 1681, et seq., and thus was an unlawful background check. By having Complainant and other aggrieved employees

sign off on the illegal background checks, Employer also violated Labor Code Section 432.5 (stating that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.”).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Labor Code section 202 requires employers pay all wages earned and unpaid within seventy-two hours of an employee’s resignation. Employer still has not paid aggrieved employees all wages earned and unpaid at the time of discharge/within seventy two hours of resignation, in that Employer has not paid for: (1) an additional hour of pay for meal periods not provided/valid, (2) an additional hour of pay for rest periods not provided/valid, and (3) unpaid minimum and overtime wages. These violations subject Employer to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁹

Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code section 256. *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365.

Violation of California Labor Code Sections 1102.5 and 98.6: Complainant alleges Employer discriminated and retaliated against Complainant (and other aggrieved employees) by subjecting her to adverse employment actions, including but not limited to, constructive termination, because she protested against conduct on the part of her Employer she reasonably believed was unlawful, such as, but not limited to, Employer shorting Complainant her earned wages and or earned commissions and for refusing to allow her to take proper meal and rest periods. Moreover, in violation of Labor Code Section 98.6, Complainant was subjected to adverse employment actions, including but not limited to, constructive termination, for exercising rights afforded to her under the Labor Code, namely her right to complain about wages unpaid and owed to her. Accordingly, Complainant and other aggrieved employees are entitled to a penalty of at least \$10,000 per violation.

Labor Code Section 1102.5 states that an employer shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another

⁹ Labor Code § 210 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

Here, immediately after Complainant engaged in protected activity under the Labor Code, by, including but not limited to, complaining to management about denied meal and rest breaks and unpaid earned wages, Complainant was subjected to adverse employment actions, including but not limited to hostile work environment harassment and constructive termination, for a pre-textual reason(s). Complainant alleges on information and belief that this constitutes retaliation and discrimination for exercising her legal rights under the Labor Code, complaining to management about unpaid wages/denied meal and rest periods and other violations of the law, all of which constitutes retaliation/discrimination in violation of Labor Code Sections 1102.5 and/or 98.6. Accordingly, Complainant and other aggrieved employees are entitled to a penalty of at least \$10,000 per violation for any similar unlawful conduct. Complainant alleges, on information and belief, that protected activity may have led to the unfair disciplining and termination of other similarly aggrieved employees.

Pursuant to PAGA, and in particular California Labor Code sections 2698, 2699(a), 2699.3, 2699.5, Complainant, acting in the public interest as a private attorney general, seeks assessment and collection of unpaid wages and civil penalties for Complainant and all other Aggrieved Employees, and the State of California against Employer and, in addition to other remedies such as declaratory and injunctive relief, for violations of all of the aforementioned California Labor Code sections 98.6, 245, 246, 246.5, 247, 247.5, 248, 248.5, and 1102.5.

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties Complainant and other similarly aggrieved employees seek to recover include, but are not

Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and file an online claim to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code sections 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of herself and all other similarly situated California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
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Main: 310.496.5818
Fax: 310.510.6429
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Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC