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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

SELENA MOSQUEDA, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

FRED LOYA INSURANCE AGENCY,
INC., a New Mexico corporation; LOYA
CASUALTY INSURANCE COMPANY, a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 06 2020

BY


LILIANA MARIBOL, DEPUTY

Case No. **CIV DS 2016339**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

BY FAX

1 Plaintiff Selena Mosqueda, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on May 28, 2020, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants employ persons in multiple branch locations within the County of San Bernardino and have violated various sections of the California Labor Code and applicable Wage Orders in this county, which give rise to the civil penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have committed wage and hour violations at multiple branches within the County of San Bernardino, including Defendants' branch locations at 1470 E. Highland Ave. Ste B, San Bernardino, CA 92404; 2094 W. Redlands Blvd. Ste. L-1, Redlands, CA 92373; and 140 W. 40th St., San Bernardino, CA 92407, among others. Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County and the State of California could bring this action to recover penalties in San Bernardino County, venue is proper. *Id.*

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Selena Mosqueda is a resident of Moreno Valley, in Riverside County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Customer Service Representative/Sales Agent from approximately June 27, 2017 to December 6, 2019. Plaintiff worked for Defendants at their branch locations in Corona and Riverside, California. During her employment, Plaintiff typically worked eight (8) hours or more per day, five (5) days or more per week, and approximately 40 hours or more per week. At the time her employment ended, Plaintiff earned approximately \$15.00 per hour. Her job duties included, without limitation, counting money; calling customers regarding appointments, quotes, and payments; reviewing and scanning documents; and creating reports regarding client policy renewals and cancellations.

7. On information and belief, Defendants required some employees, including

1 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
2 their hire or during their employment. On further information and belief, Defendants' dispute
3 resolution policy and/or arbitration agreement was and is both procedurally and substantively
4 unconscionable. Specifically, Defendants presented new hires with a Mutual Agreement to
5 Arbitrate Claims ("Arbitration Agreement") during the onboarding process, which had to be
6 reviewed and signed immediately. In fact, upon information and belief, the Arbitration
7 Agreement was one of several documents presented to new employees for signature during the
8 orientation process, including Employee Manual Acknowledgment Form, Reimbursement
9 Agreement, Licensing Requirement Notice, and Overtime Procedures Overview, among other
10 documents. Also, employees did not have a meaningful opportunity to negotiate the terms of
11 the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to
12 sign on a take-it or leave-it basis at the time they were hired, along with other on-boarding
13 documents. Further, Defendants did not set forth in the agreement or otherwise provide
14 employees with the rules which will govern the arbitration, instead forcing employees to seek
15 this information out on their own ("The arbitration shall be in accordance with the JAMS
16 Employment Arbitration Rules & Procedures, which are currently available at
17 <http://www.jamsadr.com/rules-employment-arbitration>. I understand that the Company will
18 supply me with a printed copy of those rules upon my request.").

19 8. FRED LOYA INSURANCE AGENCY, INC. was and is, upon information and
20 belief, a New Mexico corporation, and at all times hereinafter mentioned, an employer whose
21 employees are engaged throughout this county and the State of California.

22 9. LOYA CASUALTY INSURANCE COMPANY was and is, upon information
23 and belief, a California corporation, and at all times hereinafter mentioned, an employer
24 whose employees are engaged throughout this county and the State of California.

25 10. Plaintiff is unaware of the true names or capacities of the Defendants sued
26 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
27 amend the complaint and serve such fictitiously named Defendants once their names and
28 capacities become known.

1 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
2 were the partners, agents, owners, or managers of FRED LOYA INSURANCE AGENCY,
3 INC. and LOYA CASUALTY INSURANCE COMPANY at all relevant times.

4 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
5 acts and omissions alleged herein was performed by, or is attributable to, FRED LOYA
6 INSURANCE AGENCY, INC.; LOYA CASUALTY INSURANCE COMPANY; and/or
7 DOES 1 through 10 (collectively, “Defendants” or “FRED LOYA”), each acting as the agent,
8 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
9 Defendants and was acting within the course and scope of such agency, employment, joint
10 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
11 and all Defendants were in accordance with, and represent, the official policy of Defendants.

12 13. At all relevant times, Defendants, and each of them, ratified each and every act
13 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
14 and abetted the acts and omissions of each and all the other Defendants in proximately causing
15 the damages herein alleged.

16 14. Plaintiff is informed and believes, and thereon alleges, that each of said
17 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
18 omissions, occurrences, and transactions alleged herein.

19 15. Under California law, Defendants are jointly and severally liable as employers
20 for the violations alleged herein because they have each exercised sufficient control over the
21 wages, hours, working conditions, and employment status of Plaintiff and class members.
22 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
23 controlled their work schedule and/or conditions of employment, determined their rate of pay,
24 and maintained their employment records. Defendants suffered or permitted Plaintiff and
25 class members to work and/or “engaged” Plaintiff and class members so as to create a
26 common-law employment relationship. As joint employers of Plaintiff and class members,
27 Defendants are jointly and severally liable for the civil penalties and all other relief available
28 to Plaintiff and class members under the law.

1 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
3 members because Defendants have:

- 4 (a) jointly exercised meaningful control over the work performed by
5 Plaintiff and class members;
6 (b) jointly exercised meaningful control over Plaintiff's and class members'
7 wages, hours, and working conditions, including the quantity, quality
8 standards, speed, scheduling, and operative details of the tasks
9 performed by Plaintiff and class members;
10 (c) jointly required that Plaintiff and class members perform work which is
11 an integral part of Defendants' businesses; and
12 (d) jointly exercised control over Plaintiff and class members as a matter of
13 economic reality in that Plaintiff and class members were dependent on
14 Defendants, who shared the power to set the wages of Plaintiff and class
15 members and determined their working conditions, and who jointly
16 reaped the benefits from the underpayment of their wages and
17 noncompliance with other statutory provisions governing their
18 employment.

19 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
20 there has existed a unity of interest and ownership between Defendants such that any
21 individuality and separateness between the entities has ceased.

22 18. FRED LOYA INSURANCE AGENCY, INC.; LOYA CASUALTY
23 INSURANCE COMPANY; and DOES 1 through 10 are therefore alter egos of each other.

24 19. Adherence to the fiction of the separate existence of Defendants would permit
25 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
26 from liability for the wrongful acts committed by them under the name FRED LOYA

27 20. Plaintiff further alleges, upon information and belief, that Defendants FRED
28 LOYA INSURANCE AGENCY, INC. and LOYA CASUALTY INSURANCE COMPANY

are alter egos of each other for the following reasons:

- (a) According to their most recent “Statement of Information” forms filed with the California Secretary of State, FRED LOYA INSURANCE AGENCY, INC. and LOYA CASUALTY INSURANCE COMPANY share the same officers and directors, including Alfredo Jose Loya Jr., who serves as Chief Executive Officer and Secretary for FRED LOYA INSURANCE AGENCY, INC. and LOYA CASUALTY INSURANCE COMPANY; and Jose Arturo Ramirez, who serves as Chief Financial Officer for FRED LOYA INSURANCE AGENCY, INC. and LOYA CASUALTY INSURANCE COMPANY;
- (b) On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>), FRED LOYA INSURANCE AGENCY, INC. and LOYA CASUALTY INSURANCE COMPANY share the same entity address and mailing address, “1800 NORTH LEE TREVINO, SUITE 201, EL PASO TX 79936;”
- (c) On information and belief, FRED LOYA INSURANCE AGENCY, INC. and LOYA CASUALTY INSURANCE COMPANY share the same agent for service of process, “C T CORPORATION SYSTEM (C0168406);” and
- (d) On information and belief, FRED LOYA INSURANCE AGENCY, INC. and LOYA CASUALTY INSURANCE COMPANY utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants provide automotive insurance coverage to customers throughout the United States, including California. Defendants operate approximately 700 branches in at least 10 states, including approximately 188 branch locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at

1 their corporate headquarters in El Paso, Texas, which is responsible for the recruiting and
2 hiring of new employees, and communicating and implementing Defendants' company-wide
3 policies, including timekeeping policies and meal and rest period policies, to employees
4 throughout California.

5 22. In particular, Plaintiff and other non-party Aggrieved Employees, on
6 information and belief, received the same standardized documents and/or written policies.
7 Upon information and belief, the usage of standardized documents and/or written policies,
8 including new-hire documents, indicate that Defendants dictated policies at the corporate level
9 and implemented them company-wide, regardless of their employees' assigned locations or
10 positions. Upon information and belief, Defendants set forth uniform policies and procedures
11 in several documents provided at an employee's time of hire.

12 23. Upon information and belief, Defendants maintain a centralized Payroll
13 department at their corporate headquarters in El Paso, Texas, which processes payroll for all
14 non-exempt, hourly paid employees working for Defendants at their various locations and
15 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
16 upon information and belief, Defendants issue the same formatted wage statements to all non-
17 exempt, hourly paid employees in California, irrespective of their work locations. Upon
18 information and belief, Defendants process payroll for departing employees in the same
19 manner throughout the State of California, regardless of the manner in which each employee's
20 employment ends.

21 24. Defendants continue to employ non-exempt or hourly paid employees in
22 California.

23 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
25 and advisors knowledgeable about California labor and wage law, employment and personnel
26 practices, and about the requirements of California law.

27 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
28 non-party Aggrieved Employees were not paid for all hours worked because all hours worked

1 were not recorded.

2 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 receive certain wages for overtime compensation and that they were not receiving certain
5 wages for overtime compensation.

6 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive at least minimum wages for compensation and that they were not receiving at least
9 minimum wages for work that was required to be done off-the-clock. In violation of the
10 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
11 least minimum wages for work done off-the-clock.

12 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
15 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
16 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
17 not provided with all meal periods or payment of one (1) additional hour of pay at their
18 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
19 period.

20 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
23 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
24 and permitted to take a compliant rest period. In violation of the California Labor Code,
25 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
26 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
27 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
28 they were not authorized and permitted to take a compliant rest period.

1 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive complete and accurate wage statements in accordance with California law. In
4 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
5 were not provided complete and accurate wage statements.

6 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that they had a duty to maintain accurate and complete payroll records in
8 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
9 and intentionally failed to do so.

10 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 timely payment of all wages earned upon termination of employment. In violation of the
13 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
14 payment of all wages due, including, but not limited to, overtime wages, minimum wages, and
15 meal and rest period premiums, within permissible time periods.

16 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 timely payment of wages during their employment. In violation of the California Labor Code,
19 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
20 including, but not limited to, overtime wages, minimum wages, and meal and rest period
21 premiums, within permissible time periods.

22 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive their full wages due without having to execute a release of claims.

25 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 receive reimbursement for all business-related expenses and costs they incurred during the
28 course and scope of their employment and that they did not receive reimbursement of

1 applicable business-related expenses and costs incurred.

2 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew or should have known that Defendants had a duty to provide
4 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
5 of their employment with Defendants as required by the California Wage Theft Prevention
6 Act, but willfully, knowingly, and intentionally failed to do so.

7 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants knew or should have known that they had a duty to compensate
9 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
10 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
11 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
12 that they were properly denied wages, all in order to increase Defendants' profits.

13 39. At all times herein set forth, PAGA provides that any provision of law under
14 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
15 assessed and collected by the LWDA for violations of the California Labor Code and
16 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
17 civil action brought on behalf of themselves and other current or former employees pursuant
18 to procedures outlined in California Labor Code section 2699.3.

19 40. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
20 person who was employed by the alleged violator and against whom one or more of the
21 alleged violations was committed."

22 41. Plaintiff and other current and former employees of Defendants are "aggrieved
23 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
24 or former employees and one or more of the alleged violations were committed against them.

25 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
26 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
27 following requirements have been met:

28 (a) The aggrieved employee shall give written notice by online filing

(hereinafter “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

43. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

(a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

(b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice. The employer shall
3 give written notice by certified mail within that period of time to the
4 aggrieved employee or representative and the agency if the alleged
5 violation is cured, including a description of actions taken, and no civil
6 action pursuant to Section 2699 may commence. If the alleged violation
7 is not cured within the 33-day period, the employee may commence a
8 civil action pursuant to Section 2699.

9 44. On May 28, 2020, Plaintiff provided written notice by online filing to the
10 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
11 Code alleged to have been violated, including facts and theories to support the alleged
12 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
13 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
14 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
15 Plaintiff PAGA Case Number LWDA-CM-791475-20. A true and correct copy of Plaintiff's
16 written notice to the LWDA and Defendants dated May 28, 2020, is attached hereto as
17 "Exhibit 1."

18 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff
19 sent the LWDA Notice described above, and the LWDA has not responded that it intends to
20 investigate Plaintiff's claims, and Defendants have not cured the violations.

21 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
22 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
23 violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510,
24 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

25 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare
28 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty

1 dollars (\$50) for each underpaid employee for each pay period for which the employee was
2 underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
3 underpaid employee for each pay period for which the employee was underpaid . . .” Labor
4 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
5 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
6 as a private attorney general, seeks assessment and collection of civil penalties under Labor
7 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
8 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
9 and the applicable IWC wage order. Plaintiff, acting in the public interest as private attorney
10 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
11 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
12 IWC wage order.

13 48. Defendants, at all times relevant to this complaint, were employers or persons
14 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
15 Employees’ rights by violating various sections of the California Labor Code as set forth
16 above.

17 49. As set forth below, Defendants have violated numerous provisions of both the
18 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
19 Order.

20 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
22 private attorney general, seeks assessment and collection of civil penalties for herself, all other
23 non-party Aggrieved Employees, and the State of California against Defendants for violations
24 of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516,
25 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

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1 **FIRST CAUSE OF ACTION**

2 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Against all Defendants)**

4 51. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 52. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5,
9 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
10 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
11 violations of those Labor Code sections not found in section 2699.5, including sections 516,
12 1182.12, and 2810.5.

13 53. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
16 wage order for Defendants’ failure to compensate Plaintiff and other
17 non-party Aggrieved Employees with all required overtime pay, as set
18 forth below;
- 19 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
20 applicable IWC wage order for Defendants’ failure to compensate
21 Plaintiff and other non-party Aggrieved Employees with at least
22 minimum wages for all hours worked as set forth below;
- 23 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
24 applicable IWC wage order for Defendants’ failure to provide Plaintiff
25 and other non-party Aggrieved Employees with meal periods, as set
26 forth below;
- 27 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
28 IWC wage order for Defendants’ failure to authorize and permit

1 Plaintiff and other non-party Aggrieved Employees to take rest periods,
2 as set forth below;

3 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
4 wage order for failure to provide accurate and complete wage statements
5 to Plaintiff and other non-party Aggrieved Employees, as set forth
6 below;

7 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
8 IWC wage order for failure to maintain payroll records as set forth
9 below;

10 (g) Violation of Labor Code section 204 for failure to pay all earned wages
11 during employment as set forth below;

12 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
13 earned wages upon termination as set forth below;

14 (i) Violation of Labor Code section 206.5 for requiring Plaintiff and other
15 non-party Aggrieved Employees to execute a release of claims as a
16 condition to receiving wages due to them, as set forth below;

17 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
18 and other non-party Aggrieved Employees for all business expenses
19 necessarily incurred, as set forth below; and

20 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
21 provide written notice of information material to Plaintiff's and other
22 non-party Aggrieved Employees' employment with Defendants, as set
23 forth below.

24 **FAILURE TO PAY OVERTIME**

25 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

26 54. Labor Code section 1198 makes it illegal to employ an employee under
27 conditions of labor that are prohibited by the applicable wage order. California Labor Code
28 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall

1 be the . . . standard conditions of labor for employees. The employment of any employee . . .
2 under conditions of labor prohibited by the order is unlawful.”

3 55. California Labor Code section 1198 and the applicable IWC Wage Order
4 provide that it is unlawful to employ persons without compensating them at a rate of pay
5 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
6 number of hours worked by the person on a daily or weekly basis.

7 56. Specifically, the applicable IWC Wage Order provides that Defendants are and
8 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
9 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
10 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
11 hours in a workweek.

12 57. The applicable IWC Wage Order further provides that Defendants are and were
13 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
14 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
15 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
16 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

17 58. California Labor Code section 510 codifies the right to overtime compensation
18 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
19 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
20 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
21 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
22 in a day on the seventh (7th) day of work.

23 59. During the relevant time period, Defendants willfully failed to pay all overtime
24 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
25 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
26 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
27 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
28 not recorded.

1 60. First, during the relevant time period, Defendants had a company-wide policy
2 and/or practice of strictly limiting the amount of overtime employees could accrue. On
3 information and belief, this limitation on overtime accrual was based on a company-wide
4 policy of staffing branch locations strictly based on the labor hours or labor budget set by
5 corporate. This policy of limiting overtime, coupled with Defendants' understaffing policy, as
6 well as the assignment of heavy workloads and strict targets or quotas for selling policies and
7 securing policy renewals (*see infra*), led Plaintiff and other non-party Aggrieved Employees to
8 work off-the-clock before and after their scheduled shift times in order to complete their
9 assigned tasks.

10 61. As a result of this restriction on overtime accrual, Defendants forced Plaintiff
11 and other non-party Aggrieved Employees to perform work off-the-clock outside of their
12 scheduled shifts, such as processing documents, responding to phone calls and text messages
13 from management on their personal cellular phones, and traveling to mandatory trainings.
14 Defendants discouraged and impeded Plaintiff and other non-party Aggrieved Employees
15 from recording hours worked that were outside of their scheduled shifts, upon threat of
16 discipline for incurring unapproved overtime hours. Alternatively, when Plaintiff and other
17 non-party Aggrieved Employees did not clock out at their designated shift end-times, on
18 information and belief, Plaintiff and other non-party Aggrieved Employees were subject to
19 Defendants' supervisors falsifying their time records in order to prevent employees from
20 accruing overtime.

21 62. Thus, Plaintiff and other non-party Aggrieved Employees were required to
22 work off-the-clock performing tasks before and after their scheduled shifts, but were
23 prevented from accounting for and recording this time in the Kronos timekeeping system. For
24 example, Plaintiff would frequently arrive 30-60 minutes early to help process documentation
25 left over from the previous evening, but she was not permitted to clock in more than five (5)
26 minutes before her scheduled shift start-time. She was also required to clock out at her
27 designated shift end-time even when she had additional assignments to complete for the day,
28 and regularly worked 1-3 hours after she had clocked out, responding to her supervisors' calls

1 or text messages and returning to the office when requested to execute certain tasks. Finally,
2 Defendants required Plaintiff and other non-party Aggrieved Employees to attend mandatory
3 off-site training, held at other branch locations, but did not compensate them for their time
4 spent traveling to these training sessions. Thus, Defendants failed to track all of this time
5 spent working before clocking in or after clocking out, and Plaintiff and other non-party
6 Aggrieved Employees received no compensation for this time.

7 63. Second, as stated, Defendants had, and continue to have, a company-wide
8 policy staffing their branch locations strictly based on the labor hours or labor budget set by
9 the corporate office. Defendants' use of a labor budget resulted in chronic understaffing, such
10 that there were too few employees on duty to handle the heavy workload, which included
11 monthly and individual targets or quotas for selling policies and securing policy renewals, as
12 well as daily tasks to be completed on a deadline. Because Defendants did not employ or staff
13 an adequate number of employees to meet their productivity expectations and failed to provide
14 employees with adequate meal period coverage, Plaintiff and other non-party Aggrieved
15 Employees were assigned heavy workloads, which Defendants knew or should have known
16 could only be met by working additional hours. Plaintiff and other non-party Aggrieved
17 Employees missed meal periods and/or had meal periods cut short or interrupted in order to
18 handle their workloads and address customer and client demand.

19 64. Third, Defendants have, on a company-wide basis, failed to adhere to a
20 schedule of meal periods. This company-wide practice, coupled with the heavy workload and
21 pressure from Defendants to complete assigned tasks, prevented Plaintiff and other non-party
22 Aggrieved Employees from taking timely, compliant meal periods. Additionally, Plaintiff and
23 other non-party Aggrieved Employees would be required to respond to text messages and calls
24 on their personal cellular phones from supervisors and management during unpaid meal
25 periods. As a result, Plaintiff and other non-party Aggrieved Employees were not afforded
26 timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled
27 to receive meal periods. Further, on information and belief, because Defendants frowned
28 upon employees accruing meal period penalties, Defendants pressured Plaintiff and other non-

1 party Aggrieved Employees to clock out for meal periods and/or adjusted employee time
2 records to reflect compliant meal periods, regardless of whether they had received a compliant
3 meal period or not, in order to strictly limit meal penalties that Defendants would otherwise
4 owe. At least 2-3 times per week, Plaintiff would be required to clock out within the first five
5 (5) hours of her shift but would work through her meal periods, continuing to perform tasks,
6 such as assisting customers or responding to supervisors' questions about assignments. Thus,
7 Plaintiff and other non-party Aggrieved Employees performed work during meal periods for
8 which they were not paid.

9 65. Defendants knew or should have known that, as a result of these company-wide
10 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
11 their assigned duties off-the-clock, and were suffered or permitted to perform work for which
12 they were not paid. Because Plaintiff and other non-party Aggrieved Employees regularly
13 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
14 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-
15 party Aggrieved Employees were not paid overtime wages for all of the overtime hours they
16 actually worked.

17 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
18 the balance of overtime compensation as required by California law, violates the provisions of
19 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
20 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
21 2699(a), (f), and (g).

22 **FAILURE TO PAY MINIMUM WAGES**

23 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

24 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
25 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
26 to be paid to employees, and the payment of a wage less than the minimum so fixed is
27 unlawful. Compensable work time is defined by the applicable wage order as "the time
28 during which an employee is subject to the control of an employer, and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
2 Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

3 68. As set forth above, due to Defendants’ restrictions on overtime accrual,
4 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
5 for actual hours worked before and after scheduled shifts, because these hours were not
6 accurately recorded. Additionally, as set forth above, due to Defendants’ uniform practice of
7 utilizing labor budgets, resultant understaffing, assignment of heavy workloads, failure to
8 adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Plaintiff
9 and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal
10 periods to which they were entitled and were required to work off-the-clock. In addition,
11 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
12 for actual hours worked during unpaid meal periods because these hours were not always
13 correctly recorded. Finally, as set forth above, Defendants’ policies required Plaintiff and
14 other non-party Aggrieved Employees to clock out for meal periods, upon threat of discipline,
15 even though Plaintiff and other non-party Aggrieved Employees performed additional duties
16 and were subject to Defendants’ control during this time.

17 69. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
18 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
19 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
20 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
21 1194, 1197, and 1198.

22 70. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
23 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
24 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
25 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

26 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
27 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

28 71. At all relevant times herein set forth, the applicable IWC Wage Order(s) and

1 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and
2 non-party Aggrieved Employees' employment by Defendants.

3 72. At all relevant times herein set forth, California Labor Code section 512(a)
4 provides that an employer may not require, cause, or permit an employee to work for a period
5 of more than five (5) hours per day without providing the employee with a meal period of not
6 less than thirty (30) minutes, except that if the total work period per day of the employee is
7 not more than six (6) hours, the meal period may be waived by mutual consent of both the
8 employer and the employee. Under California law, first meal periods must start after no more
9 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
10 2012).

11 73. At all relevant times herein set forth, California Labor Code section 226.7,
12 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
13 meal period mandated by an applicable order of the IWC.

14 74. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
15 and the applicable IWC Wage Order also require employers to provide a second meal period
16 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
17 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
18 total hours worked is no more than twelve (12) hours, the second meal period may be waived
19 by mutual consent of the employer and the employee only if the first meal period was not
20 waived.

21 75. As stated, Defendants had, and continue to have, a company-wide policy and/or
22 practice of understaffing pursuant to their labor budget practices, while simultaneously
23 assigning heavy workloads and discouraging employees from incurring overtime, which
24 resulted in a lack of meal period coverage and prevented Plaintiff and other non-party
25 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
26 entitled. Additionally, Defendants failed to adhere to a schedule of meal periods, resulting in
27 Plaintiff and other non-party Aggrieved Employees having their meal periods cut short to
28 return to work or waiting extended periods of time before taking meal periods, due to the

1 workload and pressure to meet quotas without incurring overtime. Also, Plaintiff and other
2 non-party Aggrieved Employees were required to respond to calls on their personal cellular
3 phones from supervisors and management during unpaid meal periods. These policies and
4 practices discouraged and impeded Plaintiff and other non-party Aggrieved Employees from
5 taking compliant meal periods.

6 76. As a result of Defendants' practices and/or policies, Plaintiff and other non-
7 party Aggrieved Employees were forced to work in excess of five (5) hours before taking a
8 meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal
9 periods altogether. For example, approximately 2-3 times per week, Plaintiff worked in
10 excess of five (5) hours before taking a meal period, if she took one at all. Moreover,
11 Plaintiff's meal periods were frequently interrupted or shortened in order to respond to
12 questions from customers, other employees, or her supervisors.

13 77. Additionally, on information and belief, because Defendants frowned upon
14 employees accruing meal period penalties, Defendants' management would pressure
15 employees to clock out for meal periods and continue working in order to strictly limit meal
16 penalties that would need to be paid by Defendants. For example, Plaintiff was instructed by
17 her supervisors to clock out and continue working during her meal periods, and would be
18 verbally reprimanded by her supervisors when she failed to do so. At least 2-3 times per
19 week, Plaintiff would clock out within the first five (5) hours of her shift but would continue
20 performing tasks throughout her entire meal period. Plaintiff and other non-party Aggrieved
21 Employees worked through meal periods or had their meal periods interrupted, because there
22 were not enough employees on duty to handle the workload.

23 78. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
24 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
25 hours in one day. During her employment, Plaintiff worked shifts in excess of ten (10) hours
26 or more hours per day, but was not provided an uninterrupted second 30-minute meal period.
27 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
28 days that they were entitled to meal periods and were not relieved of all duties.

1 79. Furthermore, Defendants had a company-wide policy of requiring all newly
2 hired employees to sign blanket meal period waivers at or near their time of hire. Defendants
3 took the position that non-exempt, hourly paid employees had waived their rights to first meal
4 periods for the entirety of their employment and on that basis did not provide them with all
5 meal periods to which they were entitled. Specifically, Defendants' "Meal Break Waiver
6 Form" does not state that the employee may revoke his or her waiver in writing at any time,
7 and is thus facially invalid, in violation of Wage Order 4-2001. Defendants' company-wide
8 use of blanket meal waivers signed at or near the time of hire discouraged and impeded
9 Plaintiff and other non-party Aggrieved Employees from taking all meal periods to which they
10 were entitled. And, Defendants' presumption that meal periods would not be provided for
11 shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers
12 discouraged Plaintiff and other non-party Aggrieved Employees from taking meal periods.

13 80. Defendants knew or should have known that as a result of their company-wide
14 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
15 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
16 knew or should have known that it did not pay Plaintiff and other non-party Aggrieved
17 Employees meal period premium wages when meal periods were missed, late, short, and/or
18 interrupted.

19 81. Defendants also have engaged in a company-wide practice and/or policy of not
20 paying meal period premiums owed when compliant meal periods are not provided. Because
21 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
22 received premium pay for missed, interrupted, or late meal periods.

23 82. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
24 Employees compliant meal periods and failed to pay the full meal period premiums due.
25 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
26 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
27 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
28 (g).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

83. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other non-party Aggrieved Employees' employment by Defendants.

84. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

85. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

86. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7, Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

87. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide policies and practices of understaffing and assigning heavy workloads prevented Plaintiff and other non-party Aggrieved Employees from being relieved

1 of all duty to take compliant rest periods. Defendants also failed to adhere to a schedule of
2 rest periods, which, coupled with Defendants' failure to provide adequate rest period
3 coverage, further led to Plaintiff and other non-party Aggrieved Employees not being
4 authorized and permitted to take rest periods. Moreover, Plaintiff and other non-party
5 Aggrieved Employees were expected to respond to their personal cellular phones at all times,
6 including during rest periods.

7 88. Furthermore, upon information and belief, Defendants maintained and
8 implemented a company-wide practice and/or policy requiring that Plaintiff and other non-
9 party Aggrieved Employees remain on Defendants' premises during their rest periods.
10 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the
11 Defendants' premises during rest periods, they were denied the ability to use their rest periods
12 freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff
13 and other non-party Aggrieved Employees during rest periods, and, as a result of this rest
14 period policy, Plaintiff and other non-party Aggrieved Employees were prevented from being
15 relieved of all duty in order to take compliant rest periods and instead would be required to
16 continue working.

17 89. As a result of Defendants' practices and policies, Plaintiff and other non-party
18 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
19 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
20 entitled. For example, throughout her employment, Plaintiff missed her rest periods due to
21 understaffing and the heavy workload, or would have her rest periods interrupted by
22 Defendants' supervisors and co-workers asking questions about work-related matters or
23 requesting her assistance with customers.

24 90. Defendants also have engaged in a company-wide practice and/or policy of not
25 paying all rest period premiums owed when compliant rest periods are not authorized or
26 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
27 Employees have not received premium pay for all missed rest periods.

28 91. Defendants' conduct violates the applicable IWC Wage Order and California

1 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
2 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
3 558 and/or 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
5 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

6 92. At all relevant times herein, California Labor Code section 226(a) provides that
7 every employer shall furnish each of his or her employees an accurate and complete itemized
8 wage statement in writing, including, but not limited to, the name and address of the legal
9 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
10 applicable rates of pay.

11 93. During the relevant time period, Defendants have knowingly and intentionally
12 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
13 inaccurate wage statements. For example, Defendants issued uniform wage statements to
14 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
15 earned; total hours worked; net wages earned; the correct name and address of the legal entity
16 that is the employer; and all applicable hourly rates in effect during the pay period, including
17 overtime rates of pay, and the corresponding number of hours worked at each hourly rate.
18 Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and
19 226(a)(9).

20 94. First, because Defendants did not record the time Plaintiff and other non-party
21 Aggrieved Employees spent working off-the-clock and deducted time from their records for
22 meal periods that were interrupted and/or missed (and therefore time for which they should
23 have been paid), Defendants did not list the correct amount of gross wages and net wages
24 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
25 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
26 number of hours worked by Plaintiff and other non-party Aggrieved Employees in violation of
27 section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay
28 period and corresponding accurate number of work hours worked at each hourly rate in

1 violation of section 226(a)(9).

2 95. Second, separate from these violations, Defendants issued uniform wage
3 statements to Plaintiff and other non-party Aggrieved Employees that failed to correctly list
4 the name and address of the legal entity of the actual employer in violation of 226(a)(8). The
5 purpose of section 226(a)(8) is to provide California employees with transparency as to the
6 true identity of their employer, to allow the employee to contact their employer during
7 employment in the future for various reasons, including filing an administrative claim, judicial
8 claim, or other action to seek relief against their employer, to obtain unemployment benefits,
9 etc. Plaintiff's and other non-party Aggrieved Employees' wage statements incorrectly list the
10 employer as "FRED LOYA INSURANCE AGENCY," with the address 1800 Lee Trevino
11 **Drive**, El Paso, TX 79936, but, according to the California Secretary of State's website, there
12 is no such entity by this name or address. However, a similarly named entity, "FRED LOYA
13 INSURANCE AGENCY, **INC.**," is listed on the California Secretary of State's website with a
14 different address, 1800 **North** Lee Trevino, **Suite 201**, El Paso, TX 79936.

15 96. The wage statement deficiencies also include, without limitation, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
17 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
18 only the last four digits of his or her social security number or an employee identification
19 number other than a social security number; failing to list the inclusive dates of the period for
20 which aggrieved employees were paid; and/or failing to state all hours worked as a result of
21 not recording or stating hours worked off-the-clock.

22 97. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
24 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
25 employment of any employees for longer hours than those fixed by the order or under
26 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
27 Wage Order, employers are required to keep accurate time records showing when the
28 employee begins and ends each work period and meal period. During the relevant time

1 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
2 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
3 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
4 and/or policy of falsifying Plaintiff's and other non-party Aggrieved Employees' time records
5 by deducting meal periods or recording that compliant meal periods were taken regardless of
6 if or when meal periods were actually taken, and thereby failed to keep accurate records of
7 meal start and end times for Plaintiff and other non-party Aggrieved Employees.
8 Furthermore, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved
9 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
10 no records of meal start and end times for second meal periods.

11 98. California Labor Code section 1174(d) provides that "[e]very person employing
12 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
13 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
14 plants or establishments at which employees are employed, payroll records showing the hours
15 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
16 applicable piece rate paid to, employees employed at the respective plants or
17 establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d),
18 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
19 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
20 as a result of failing to record the off-the-clock hours that they worked.

21 99. Because Defendants' violations of 226(a) and 1174(d) were committed against
22 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
23 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
24 1174.5, and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

26 **VIOLATION OF LABOR CODE SECTION 204**

27 100. At all relevant times herein set forth, California Labor Code section 204
28 requires that all wages earned by any person in any employment between the 1st and the 15th

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the 16th and the 26th day of the month during which
3 the labor was performed. Labor Code section 204 further provides that all wages earned by
4 any person in any employment between the 16th and the last day, inclusive, of any calendar
5 month, other than those wages due upon termination of an employee, are due and payable
6 between the 1st and the 10th day of the following month.

7 101. At all relevant times herein, California Labor Code section 204 also requires
8 that all wages earned for labor in excess of the normal work period shall be paid no later than
9 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
10 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
11 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
12 more than seven (7) calendar days following the close of the payroll period.

13 102. During the relevant time period, Defendants willfully failed to pay Plaintiff and
14 other non-party Aggrieved Employees all wages due to them within any time period specified
15 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
16 wages, and meal and rest period premium wages.

17 103. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY WAGES UPON TERMINATION**

20 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

21 104. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
22 that if an employer discharges an employee, the wages earned and unpaid at the time of
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
24 her employment, his or her wages shall become due and payable not later than seventy-two
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the
27 time of quitting.

28 105. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved

1 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
2 above, including but not limited to, overtime wages, minimum wages, and meal and rest
3 period premium wages, either at the time of discharge, or within seventy-two (72) hours of
4 their leaving Defendants' employ.

5 106. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
6 who are no longer employed by Defendants their wages earned and unpaid at the time of
7 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
8 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
9 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
10 2699(a), (f), and (g).

11 **UNLAWFUL REQUIREMENT FOR RELEASE OF CLAIMS AS A CONDITION TO**
12 **RECEIVING WAGES**

13 **VIOLATION OF LABOR CODE SECTION 206.5**

14 107. California Labor Code section 206.5 prohibits employers from requiring
15 employees to execute releases of a claim or right "on account of wages due, or to become due,
16 or made as an advance on wages to be earned, unless payment of those wages has been made.
17 A release required or executed in violation of the provisions of this section shall be null and
18 void as between the employer and the employee."

19 108. During the relevant time period, Defendants required Plaintiff and other non-
20 party Aggrieved Employees to release their claims for unpaid wages as a condition to
21 receiving their paychecks. For example, on information and belief, on information and belief,
22 Defendants required Plaintiff and other non-party Aggrieved Employees to sign verifications
23 for each pay period, on a biweekly basis, that stated: "I certify as follows: (a) That the hours I
24 worked are all recorded in the system or, if applicable, in the Time Sheet Correction forms I
25 have submitted to my manager; . . . and (c) That I have taken all the meal and rest breaks in
26 accordance with Fred Loya's policies[,]" regardless if they were provided with a compliant
27 meal period or permitted or authorized to take a compliant rest period. Defendants compelled
28 Plaintiffs and other non-party Aggrieved Employees to sign this false verification when they,

1 in fact, had not received all earned and unpaid wages, including overtime wages, minimum
2 wages, and/or meal and rest period premium wages.

3 109. Defendants' policy and practice of requiring Plaintiff and other non-party
4 Aggrieved Employees to release their claims for unpaid wages as a condition to receiving
5 their wages is in violation of California Labor Code section 206.5. Plaintiff and other non-
6 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
7 Code sections 2699(a), (f), and (g).

8 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

9 **VIOLATION OF LABOR CODE SECTION 2802**

10 110. At all times herein set forth, California Labor Code section 2802 provides that
11 an employer must reimburse employees for all necessary expenditures and losses incurred by
12 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
13 to prevent employers from passing off their cost of doing business and operating expenses on
14 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
15 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen the
16 employer requires the use of tools or equipment or they are necessary to the performance of a
17 job, such tools and equipment shall be provided and maintained by the employer, except that
18 an employee whose wages are at least two (2) times the minimum wage may provide and
19 maintain hand tools and equipment customarily required by the particular trade or craft."

20 111. First, during the relevant time period, Defendants had a company-wide policy
21 of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
22 cellular phones and cellular data to carry out their job duties, but Defendants failed to fully
23 reimburse them for the costs of their work-related cellular phone expenses. For example,
24 Plaintiff and other non-party Aggrieved Employees were required to use their personal
25 cellular phones to complete their work-related tasks, such as discussing work-related matters
26 with supervisors. Although Defendants required Plaintiff and other non-party Aggrieved
27 Employees to utilize their personal cellular phones to carry out their work-related
28 responsibilities, Defendants failed to fully reimburse them for this cost.

112. Second, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to utilize their own personal vehicles to carry out company business, such as depositing money in the bank, but failed to reimburse them for all costs of travel, including mileage. For example, Plaintiff periodically drove to the bank, which was approximately 11 miles away, up to three (3) times per day. However, Defendants only reimbursed a portion of her travel expenses, paying a reduced rate of \$2.30 per day instead of at the IRS Standard Mileage Rate¹ of 57.5 cents (2020), 58 cents (2019), 54.5 cents (2018), 53.5 cents (2017), and so forth, or instead of her actual mileage or travel expenses. Defendants required that Plaintiff and other non-party Aggrieved Employees use their own vehicles and complete these tasks as part of their job duties, Defendants never reimbursed them for all of their travel expenses.

113. Third, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to obtain and pay for certain licenses, including their Limited Lines License, Personal Lines License, and Fire and Casualty License, that were required for their employment, as well as associated costs such as course and examination fees and study materials. Defendants had a uniform written policy of only reimbursing employees if they passed the licensing examination(s) and were continuously employed by Defendants (“If I pass the examination and I am continuously employed by the Company for one year thereafter, the Company will reimburse me”). Thus, Defendants failed to reimburse other non-party Aggrieved Employees who were employed by Defendants for less than one (1) calendar year for all of the costs of obtaining these licenses.

114. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with the actual tools for use on the job, such as company phones and company vehicles, to be used for fulfilling work-related tasks, or, Defendants could have reimbursed employees for their cellular phone usage, travel expenses, mileage, and license and examination fees. Instead, Defendants passed these operating costs off onto Plaintiff and

¹ See IRS.gov Standard Mileage Rates, available at <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last accessed July 24, 2020).

1 other non-party Aggrieved Employees. At all relevant times, Plaintiff and other non-party
2 Aggrieved Employees did not earn at least two (2) times the minimum wage.

3 115. Defendants' company-wide policy and/or practice of passing on their operating
4 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
5 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
6 other non-party Aggrieved Employees for necessary business-related expenses and costs.

7 116. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
10 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

11 117. California's Wage Theft Prevention Act was enacted to ensure that employers
12 provide employees with basic information material to their employment relationship at the
13 time of hiring, and to ensure that employees are given written and timely notice of any
14 changes to basic information material to their employment. Codified at California Labor
15 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
16 employer must provide written notice to employees containing basic and material payroll
17 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
18 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
19 overtime, the regular payday designated by the employer, and any allowances claims as part
20 of the minimum wage, including meal or lodging allowances. Labor Code section
21 2810.5(a)(1)(A)-(C).

22 118. During the relevant time period, Defendants failed to provide Plaintiff and
23 other non-party Aggrieved Employees with written notice that lists all the requisite
24 information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants
25 failed to provide Plaintiff and other non-party Aggrieved Employees with the rate or rates of
26 pay, including any rates for overtime, as applicable, in violation of section 2810.5(a)(1)(A).
27 Instead, the wage theft form Defendants provided to Plaintiff is blank where wage information
28 for overtime rates should be filled in.

119. Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants are in violation of Labor Code section 2810.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 206.5 (by requiring employees to execute a release of claims for wages due); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment).

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

1 4. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
4 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

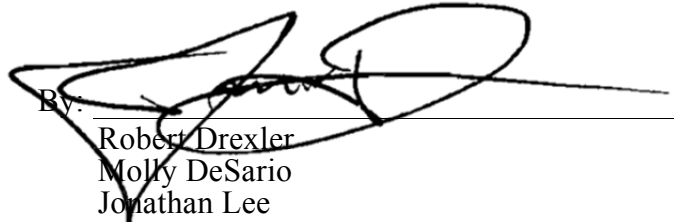
5 5. For pre-judgment and post-judgment interest as provided by law; and

6 6. For such other and further relief as the Court may deem equitable and
7 appropriate.

8
9 Dated: August 6, 2020

Respectfully submitted,

Capstone Law APC

11
12  BY: _____
13 Robert Drexler
14 Molly DeSario
15 Jonathan Lee

Attorneys for Plaintiff Selena Mosqueda

Exhibit 1



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MICHELLE KENNEDY
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May 28, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Selena Mosqueda v. Fred Loya Insurance Agency, Inc., et al.*

Dear PAGA Administrator:

This office represents Selena Mosqueda in connection with her claims under the California Labor Code. Ms. Mosqueda was an employee of FRED LOYA INSURANCE AGENCY, INC. and/or LOYA CASUALTY INSURANCE COMPANY. For the purpose of this letter, Ms. Mosqueda collectively refers to these entities as "FRED LOYA."

The employers may be contacted directly at the addresses below:

FRED LOYA INSURANCE AGENCY, INC.
1800 NORTH LEE TREVINO, SUITE 201
EL PASO TX 79936

LOYA CASUALTY INSURANCE
COMPANY
1800 NORTH LEE TREVINO, SUITE 201
EL PASO TX 79936

Ms. Mosqueda intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Mosqueda seeks relief on behalf of herself, the State of California, and other persons who are or were employed by FRED LOYA in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

FRED LOYA employed Ms. Mosqueda as a non-exempt, hourly paid Customer Service Representative/Sales Agent from approximately June 27, 2017 to December 6, 2019. Ms. Mosqueda worked for FRED LOYA at its branch locations in Corona, California and Riverside, California. She typically worked eight (8) or more hours per day, five (5) or more days per week, and approximately 40 hours or more per week. At the time her employment ended, Ms. Mosqueda was compensated approximately \$15.00 per hour. Her job duties included counting money; calling customers regarding appointments, quotes, and payments; reviewing and scanning documents; and creating reports regarding client policy renewals and cancellations.

FRED LOYA has committed one or more of the following Labor Code violations against Ms. Mosqueda, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

FRED LOYA’s Company-Wide and Uniform Payroll and HR Practices

FRED LOYA provides automotive insurance coverage to customers throughout the United States, including California. FRED LOYA operates approximately 700 branches in at least 10 states, including approximately 188 branch locations in California, and employs approximately 3,500 employees nationwide. FRED LOYA INSURANCE AGENCY, INC. is a New Mexico corporation headquartered in El Paso, Texas. LOYA CASUALTY INSURANCE COMPANY is a California corporation headquartered in El Paso, Texas. Upon information and belief, FRED LOYA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in El Paso, Texas, for all non-exempt, hourly paid employees working for FRED LOYA in California, including Ms. Mosqueda and other aggrieved employees. At all relevant times, FRED LOYA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Mosqueda and other aggrieved employees, regardless of their location or position.

Upon information and belief, FRED LOYA maintains a centralized Payroll department at its corporate headquarters in El Paso, Texas, which processes payroll for all non-exempt, hourly paid employees working for FRED LOYA in California, including Ms. Mosqueda and other aggrieved employees. Further, FRED LOYA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Mosqueda and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, FRED LOYA utilized the same methods and formulas when calculating wages due to Ms. Mosqueda and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Ms. Mosqueda’s experience and counsel’s review of those records currently available relating to Ms. Mosqueda’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Mosqueda reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

FRED LOYA willfully failed to pay all overtime wages owed to Ms. Mosqueda and other aggrieved employees. During the relevant time period, Ms. Mosqueda and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, FRED LOYA had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing branch locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with FRED LOYA's understaffing policy, as well as the assignment of heavy workloads and strict targets or quotas for selling policies and securing policy renewals (*see infra*), led Ms. Mosqueda and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

As a result of this restriction on overtime accrual, FRED LOYA forced Ms. Mosqueda and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as processing documents, responding to phone calls and text messages from management on their personal cellular phones, and traveling to mandatory trainings. FRED LOYA discouraged and impeded Ms. Mosqueda and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline for incurring unapproved overtime hours. Alternatively, when Ms. Mosqueda and other aggrieved employees did not clock out at their designated shift end-times, on information and belief, Ms. Mosqueda and other aggrieved employees were subject to FRED LOYA's supervisors falsifying their time records in order to prevent employees from accruing overtime.

Thus, Ms. Mosqueda and other aggrieved employees were required to work off-the-clock performing tasks before and after their scheduled shifts, but were prevented from accounting for and recording this time in the Kronos timekeeping system. For example, Ms. Mosqueda would frequently arrive 30-60 minutes early to help process documentation left over from the previous evening, but she was not permitted to clock in more than five (5) minutes before her scheduled shift start-time. She was also required to clock out at her designated shift end-time even when she had additional assignments to complete for the day, and regularly worked 1-3 hours after she had clocked out, responding to her supervisors' calls or text messages and returning to the office when requested to execute certain tasks. Finally, FRED LOYA required Ms. Mosqueda and other aggrieved employees to attend mandatory off-site training, held at other FRED LOYA branch locations, but did not compensate them for their time spent traveling to these training sessions. Thus, FRED LOYA failed to track all of this time spent working before clocking in or after clocking out, and Ms. Mosqueda and other aggrieved employees received no compensation for this time.

Second, as stated, FRED LOYA had, and continues to have, a company-wide policy staffing its branch locations strictly based on the labor hours or labor budget set by the corporate office. FRED LOYA's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included monthly and individual targets or quotas for selling policies and securing policy renewals, as well as daily tasks to be completed on a deadline. Because FRED LOYA did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Ms. Mosqueda and other aggrieved employees were assigned heavy workloads, which FRED LOYA knew or should have known could only be met by working additional hours. Ms. Mosqueda and

other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and address customer and client demand.

Third, FRED LOYA has, on a company-wide basis, failed to adhere to a schedule of meal periods. This company-wide practice, coupled with the heavy workload and pressure from FRED LOYA to complete assigned tasks, impeded Ms. Mosqueda and other aggrieved employees from taking timely, compliant meal periods. Additionally, Ms. Mosqueda and other aggrieved employees would be required to respond to text messages and calls on their personal cellular phones from supervisors and management during unpaid meal periods. As a result, Ms. Mosqueda and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. Further, on information and belief, because FRED LOYA frowned upon employees accruing meal period penalties, FRED LOYA pressured Ms. Mosqueda and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that FRED LOYA would otherwise owe. At least 2-3 times per week, Ms. Mosqueda was required to clock out within the first five (5) hours of her shift but would work through her meal periods, continuing to performing tasks, such as assisting customers or responding to supervisors' questions about assignments. Thus, Ms. Mosqueda and other aggrieved employees performed work during meal periods for which they were not paid. FRED LOYA did not pay Ms. Mosqueda and other aggrieved employees for the time they continued to perform tasks during meal periods.

FRED LOYA knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Mosqueda and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. FRED LOYA also knew, or should have known, that it did not compensate Ms. Mosqueda and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Ms. Mosqueda and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Mosqueda and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. FRED LOYA's failure to pay Ms. Mosqueda and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, FRED LOYA did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, FRED LOYA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, FRED LOYA failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, FRED LOYA failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Mosqueda and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

As stated above, due to FRED LOYA’s restrictions on overtime accrual, FRED LOYA systematically failed to pay Ms. Mosqueda and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to FRED LOYA’s uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads, failure to adhere to a schedule of meal periods and subsequent lack of meal period coverage, Ms. Mosqueda and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, FRED LOYA systematically failed to pay Ms. Mosqueda and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded. As set forth above, FRED LOYA’s policies required Ms. Mosqueda and other aggrieved employees to clock out for meal periods, upon threat of discipline, even though Ms. Mosqueda and other aggrieved employees performed additional duties and were subject to FRED LOYA’s control during this time.

Thus, FRED LOYA did not pay minimum wages for all hours worked by Ms. Mosqueda and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, FRED LOYA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, FRED LOYA regularly failed to pay at least minimum wages to Ms. Mosqueda and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Mosqueda and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v.*

Superior Court, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, FRED LOYA had, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads and discouraging employees from incurring overtime, which resulted in a lack of meal period coverage and prevented Ms. Mosqueda and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, FRED LOYA failed to adhere to a schedule of meal periods, resulting in Ms. Mosqueda and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet quotas without incurring overtime. Also, Ms. Mosqueda and other aggrieved employees were required to respond to calls on their personal cellular phones from supervisors and management during unpaid meal periods. These policies and practices discouraged and impeded Ms. Mosqueda and other aggrieved employees from taking compliant meal periods.

As a result of FRED LOYA's practices and/or policies, Ms. Mosqueda and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately 2-3 times per week, Ms. Mosqueda worked in excess of five (5) hours before taking a meal period, if she took one at all. Moreover, Ms. Mosqueda's meal periods were frequently interrupted or shortened in order to respond to questions from FRED LOYA's customers, employees, or supervisors.

Additionally, on information and belief, because FRED LOYA frowned upon employees accruing meal period penalties, FRED LOYA's management would pressure employees to clock out for meal periods and continue working in order to strictly limit meal penalties that would need to be paid by FRED LOYA. For example, Ms. Mosqueda was instructed by her supervisors to clock out and continue working during her meal periods, and would be verbally reprimanded by her supervisors when she failed to do so. At least 2-3 times per week, Ms. Mosqueda would clock out within the first five (5) hours of her shift but would continue performing tasks throughout her entire meal period. Ms. Cornell and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the workload.

Moreover, FRED LOYA did not provide Ms. Mosqueda and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Mosqueda worked shifts in excess of ten (10) hours or more per day, but was not provided a second 30-minute meal period. Ms. Mosqueda and other aggrieved employees did not sign valid meal period waivers on all days that they were entitled to meal periods and were not relieved of all duties.

Furthermore, FRED LOYA had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. FRED LOYA took the position that non-exempt, hourly paid employees had waived their rights to first meal periods for the entirety of their employment and on that basis did not provide them with all meal periods to which they were

entitled. Specifically, FRED LOYA's "Meal Break Waiver Form" does not state that the employee may revoke his or her waiver in writing at any time, and is thus facially invalid, in violation of Wage Order 4-2001. FRED LOYA's company-wide use of blanket meal waivers signed at or near the time of hire discouraged and impeded Ms. Mosqueda and other aggrieved employees from taking all meal periods to which they were entitled. And, FRED LOYA's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers discouraged Ms. Mosqueda and other aggrieved employees from taking meal periods.

FRED LOYA knew or should have known that as a result of its policies, Ms. Mosqueda and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. FRED LOYA further knew or should have known that it did not pay Ms. Mosqueda and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted because, on information and belief, FRED LOYA adjusted employee time records to reflect compliant meal periods, even if none were taken.

FRED LOYA also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Mosqueda and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that FRED LOYA did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because it did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, FRED LOYA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Mosqueda and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, FRED LOYA regularly failed to authorize and permit Ms. Mosqueda and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour

period worked or major fraction thereof. As with meal periods, FRED LOYA's policies and/or practice of understaffing and assigning heavy workloads prevented Ms. Mosqueda and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. FRED LOYA also failed to adhere to a schedule rest periods, which, coupled with FRED LOYA's failure to provide adequate rest period coverage, further led to Ms. Mosqueda and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Ms. Mosqueda and other aggrieved employees were expected to respond to their personal cellular phones at all times, including during rest periods.

Furthermore, on information and belief, FRED LOYA maintained and implemented a company-wide practice and/or policy requiring that Ms. Mosqueda and other aggrieved employees remain on FRED LOYA's premises during their rest periods. Because Ms. Mosqueda and other aggrieved employees were restricted from leaving the FRED LOYA's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, FRED LOYA effectively maintained control over Ms. Mosqueda and other aggrieved employees during rest periods, and, as a result of this rest period policy, FRED LOYA did not relinquish control over Ms. Mosqueda and other aggrieved employees during rest periods. As a result, Ms. Mosqueda and other aggrieved employees were prevented from being relieved of all duty in order to take compliant rest periods and instead would be required to continue working.

As a result of FRED LOYA's practices and policies, Ms. Mosqueda and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. Throughout her employment, Ms. Mosqueda missed her rest periods due to understaffing and the heavy workload, or would have her rest periods interrupted by FRED LOYA's supervisors and co-workers asking questions about work-related matters or requesting her assistance with customers.

FRED LOYA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Mosqueda and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that FRED LOYA did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because FRED LOYA did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, FRED LOYA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Mosqueda and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. FRED LOYA has not provided Ms. Mosqueda and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages

statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, FRED LOYA has knowingly and intentionally provided Ms. Mosqueda and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FRED LOYA issued uniform wage statements to Ms. Mosqueda and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, FRED LOYA violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because FRED LOYA did not record the time Ms. Mosqueda and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), FRED LOYA did not list the correct amount of gross wages and net wages earned by Ms. Mosqueda and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, FRED LOYA failed to accurately list the total number of the hours worked by Ms. Mosqueda and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because FRED LOYA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, FRED LOYA did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). FRED LOYA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, FRED LOYA issued uniform wage statements to Ms. Mosqueda and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Ms. Mosqueda's and other aggrieved employees' wage statements incorrectly list the employer as "FRED LOYA INSURANCE AGENCY," with the address 1800 Lee Trevino **Drive**, El Paso, TX 79936, but, according to the California Secretary of State's website, there is no such entity by this name or address. However, a similarly named entity, "FRED LOYA INSURANCE AGENCY, **INC.**," is listed on the California Secretary of State's website with a different address, 1800 **North** Lee Trevino, **Suite 201**, El Paso, TX 79936.

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list 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; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), FRED LOYA willfully failed to maintain accurate payroll records for Ms. Mosqueda and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, FRED LOYA engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Mosqueda and other aggrieved employees in violation of section 1198. Furthermore, in light of FRED LOYA’s failure to provide Ms. Mosqueda and other aggrieved employees with second 30-minute meal periods to which they were entitled, FRED LOYA kept no records of meal start and end times for second meal periods.

Because FRED LOYA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Mosqueda and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Mosqueda and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Mosqueda and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon

termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, FRED LOYA failed to pay Ms. Mosqueda and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Mosqueda and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

FRED LOYA willfully failed to pay Ms. Mosqueda and other aggrieved employees who are no longer employed by FRED LOYA all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving FRED LOYA's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Mosqueda and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, FRED LOYA required Ms. Mosqueda and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, FRED LOYA required Ms. Mosqueda and other aggrieved employees to sign verifications for each pay period, on a biweekly basis, that stated: "I certify as

follows: (a) That the hours I worked are all recorded in the system or, if applicable, in the Time Sheet Correction forms I have submitted to my manager; . . . and (c) That I have taken all the meal and rest breaks in accordance with Fred Loya's policies[,]” regardless if they were provided with a compliant meal period or permitted or authorized to take a compliant rest period. FRED LOYA compelled Ms. Mosqueda and other aggrieved employees to sign this false verification when they, in fact, had not received all earned and unpaid wages, including overtime wages, minimum wages, and meal and rest period premium wages. FRED LOYA's policy and practice of requiring Ms. Mosqueda and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

Ms. Mosqueda and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, FRED LOYA, on a company-wide basis, required that Ms. Mosqueda and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Ms. Mosqueda and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing work-related matters with supervisors. Although FRED LOYA required Ms. Mosqueda and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, FRED LOYA failed to fully reimburse them for this cost.

Second, FRED LOYA had a company-wide policy of requiring Ms. Mosqueda and other aggrieved employees to utilize their own personal vehicles for work purposes such as depositing money in the bank, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Mosqueda periodically drove to the bank, which was approximately 11 miles away, up to three (3) times per day. However, FRED LOYA only reimbursed a portion of her travel expenses, paying a reduced rate of \$2.30 per day instead of at the IRS Standard Mileage Rate² of 57.5 cents (2020), 58 cents (2019), 54.5 cents (2018), 53.5 cents (2017), and so forth, or instead of her actual mileage or travel expenses. Although FRED LOYA required Ms. Mosqueda and other aggrieved employees to utilize their own vehicles to travel to and from the bank, FRED LOYA did not reimburse them fully for all of their travel expenses.

² See IRS.gov Standard Mileage Rates, available at <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last accessed May 24, 2020).

Additionally, FRED LOYA, on a company-wide basis, required Ms. Mosqueda and other aggrieved employees to obtain and pay for certain licenses, including their Limited Lines License, Personal Lines License, and Fire and Casualty License, that were required for their employment, as well as associated costs such as course and examination fees and study materials. FRED LOYA had a uniform policy of only reimbursing employees if they passed the licensing examination(s) and were continuously employed by FRED LOYA (“If I pass the examination and I am continuously employed by the Company for one year thereafter, the Company will reimburse me . . .”). Thus, FRED LOYA failed to reimburse other aggrieved employees who were employed by FRED LOYA for less than one (1) calendar year for all of the costs of obtaining these licenses.

FRED LOYA could have provided Ms. Mosqueda and other aggrieved employees with the actual tools for use on the job, such as company vehicles or company phones to be used for fulfilling work-related tasks, or, FRED LOYA could have reimbursed employees for the costs of their cellular phone usage, travel expenses, mileage, and license and examination fees. Instead, FRED LOYA passed these operating costs off onto Ms. Mosqueda and other aggrieved employees. At all relevant times, Ms. Mosqueda did not earn at least two (2) times the minimum wage.

Thus, FRED LOYA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Mosqueda and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

FRED LOYA failed to provide Ms. Mosqueda and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, FRED LOYA failed to provide Ms. Mosqueda and other aggrieved employees with the rate or rates of pay, including any rates for overtime, as applicable, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form FRED LOYA provided to Ms. Mosqueda is blank where wage information for overtime rates should be filled in.

Ms. Mosqueda and other aggrieved employees are therefore entitled to recover penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

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) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” 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.” FRED LOYA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Mosqueda’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Mosqueda seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Mosqueda, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against FRED LOYA for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Mosqueda seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Mosqueda’s reasonable attempt to settle her dispute with FRED LOYA prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform FRED LOYA of Ms. Mosqueda’s aforementioned grievances and the proposed remedies as detailed below, while affording FRED LOYA a reasonable opportunity to satisfy Ms. Mosqueda’s demands.

Demand is hereby made that FRED LOYA shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. FRED LOYA shall pay Ms. Mosqueda and all other aggrieved employees employed by FRED LOYA at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. FRED LOYA shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. FRED LOYA shall conduct a survey or interview all current and former aggrieved employees in California who worked for FRED LOYA in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay

for travel, cellular phone expenses, license and examination fees, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. FRED LOYA shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. FRED LOYA also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. FRED LOYA shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for FRED LOYA's benefit, including, but not limited to, costs of travel, cellular phone expenses, and license and examination fees, as required by Labor Code section 2802.
6. FRED LOYA shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. FRED LOYA shall provide Ms. Mosqueda and all aggrieved employees employed by FRED LOYA at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. FRED LOYA shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks (Labor Code section 206.5).
9. FRED LOYA shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
10. FRED LOYA shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Michelle Kennedy', with a stylized flourish at the end.

Michelle Kennedy

Copy: FRED LOYA INSURANCE AGENCY, INC. (via U.S. Certified Mail); LOYA CASUALTY INSURANCE COMPANY, INC. (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 0090 0001 3768 4513

stone

LAW APC

Century Park East, Ste 1000
El Paso, TX 79906



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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FRED LOYA INSURANCE AGENCY, INC.
1800 NORTH LEE TREVINO, SUITE 201
EL PASO TX 79936



9590 9402 4882 9032 7441 82

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4513

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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☐ Adult Signature Restricted Delivery

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☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

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☐ Return Receipt for Merchandise

☐ Signature Confirmation™

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Domestic Return Receipt

FRED LOYA INSURANCE AGENCY, INC.
1800 NORTH LEE TREVINO, SUITE 201
EL PASO TX 79936

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$ 2.80

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

FRED LOYA INSURANCE AGENCY, INC.

Street and Apt. No., or PO Box No. 1800 NORTH LEE TREVINO, SUITE 201

City, State, ZIP+4® EL PASO TX 79936

PS Form 3800, April 2015 PSN 7530-02-000-9047

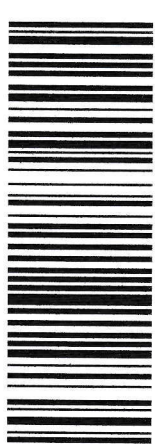
See Reverse for Instructions

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Mosqueda v. Fred
Loya Insurance
Agency, Inc.

7020 0090 0001 3768 4513

stone
LAW APC
Century Park East, Ste 1000
El Paso, TX 79906



7020 0090 0001 3768 4520

LOYA CASUALTY INSURANCE COMPANY
1800 NORTH LEE TREVINO, SUITE 201
EL PASO TX 79936



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LOYA CASUALTY INSURANCE COMPANY
1800 NORTH LEE TREVINO, SUITE 201
EL PASO TX 79936



9590 9402 4882 9032 7441 75

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4520

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
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- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
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\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

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LOYA CASUALTY INSURANCE COMPANY

1800 NORTH LEE TREVINO, SUITE 201

EL PASO TX 79936

PS Form 3800, April 2015 PSN 7530-02-000-9047

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Mosqueda v. Loya
Casualty
Insurance Company

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1. Article Addressed to:

LOYA CASUALTY INSURANCE COMPANY
1800 NORTH LEE TREVINO, SUITE 201
EL PASO TX 79936



9590 9402 4882 9032 7441 75

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4520

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Mailroom AV

☐ Agent

☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

JUN 06 2020

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

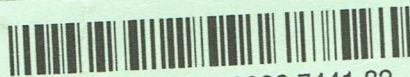
Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FRED LOYA INSURANCE AGENCY, INC.
1800 NORTH LEE TREVINO, SUITE 201
EL PASO TX 79936



9590 9402 4882 9032 7441 82

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4513

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Mailroom AV

☐ Agent

☐ Addressee

B. Received by (Printed Name)

JUN 06 2020

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt