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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12 JAMICHA HORACE, as an aggrieved
employee pursuant to the Private Attorneys
13 General Act ("PAGA"), on behalf of the
State of California and other aggrieved
14 employees,

15 Plaintiff,

16 vs.

17 CANON BUSINESS PROCESS
SERVICES, INC., a Delaware corporation;
18 CANON U.S.A., INC., a New York
corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case No.: **20STCV29057**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiff Jamicha Horace, 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 20, 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, upon information and belief, Defendants employ persons in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. Further, venue is proper in this Court because Defendants are non-California citizens and have their principal place of business in New York, and because they have not filed a statement with the California Secretary of State designating a county in which they maintain a principal place of business in accordance with California Corporations Code sections 16959 and 18200. Cal. Code Civ. P. § 395.2. Thus, Defendants have no right to any particular venue and Plaintiff may file this complaint in any county in California. *See Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union*, 37 Cal.2d 760, 763-764 (1951); *see also, Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-247 (1970). Cal. Code Civ. P. § 395.5.

6. 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

7. Plaintiff Jamicha Horace is a resident of Oakland, in Alameda County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee, including Records Tech I/Records Case Clerk, from approximately April 2019 to February 2020. Plaintiff worked for Defendants at an office location in San Francisco, California. During her employment, Plaintiff typically worked eight (8) to ten (10) hours per day, five (5) to six (6) days per week, from 8:30 a.m. to 5:30 p.m. or 7:30 p.m. Her job duties included, without limitation, preparing, faxing and mailing legal documents; ordering office supplies; and maintaining the office premises.

8. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute

1 resolution policy and/or arbitration agreement was and is both procedurally and substantively
2 unconscionable. Specifically, Defendants presented new hires with a Dispute Resolution
3 Policy (“Arbitration Agreement”) during the onboarding process, which had to be reviewed
4 and signed immediately. In fact, upon information and belief, the Arbitration Agreement was
5 one of several documents presented to new employees for signature during the orientation
6 process, including an Employee 90-Day Restriction Agreement, Drug & Alcohol Policy
7 Acknowledgment and Consent, Confidential Information and Non-Solicitation Agreement,
8 and Employee Handbook, among other documents. Also, employees did not have a
9 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
10 provided to Defendants’ employees for them to sign on a take-it or leave-it basis at the time
11 they were hired, along with other on-boarding documents. Further, Defendants did not set
12 forth in the agreement or otherwise provide employees with the rules which will govern the
13 arbitration, instead forcing employees to seek this information out on their own (“Copies of
14 both JAMS and/or the AAA respective arbitration rules and/or a list of offices for JAMS and
15 AAA may be obtained from the Human Resources Department or directly from JAMS or the
16 AAA upon written request to them at their listed offices or by contacting them at their
17 respective websites as follows: www.jamsadr.com (JAMS) and www.adr.org (AAA)”).

18 9. Defendant CANON BUSINESS PROCESS SERVICES, INC. was and is, upon
19 information and belief, a Delaware corporation, and at all times hereinafter mentioned, an
20 employer whose employees are engaged throughout this county and the State of California, or
21 the various states of the United States of America.

22 10. Defendant CANON U.S.A., INC. was and is, upon information and belief, a
23 New York corporation, and at all times hereinafter mentioned, an employer whose employees
24 are engaged throughout this county, the State of California, or the various states of the United
25 States of America.

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

capacities become known.

12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of CANON BUSINESS PROCESS SERVICES, INC. and/or CANON U.S.A., INC., at all relevant times.

13. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, CANON BUSINESS PROCESS SERVICES, INC.; CANON U.S.A., INC.; and/or DOES 1 through 10 (collectively “Defendants” or “CANON”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

16. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and other non-party Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiff and other non-party

1 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
2 available to Plaintiff and other non-party Aggrieved Employees under the law.

3 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
4 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
5 non-party Aggrieved Employees because Defendants have:

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

23 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
24 there has existed a unity of interest and ownership between Defendants such that any
25 individuality and separateness between the entities has ceased.

26 19. CANON BUSINESS PROCESS SERVICES, INC.; CANON U.S.A., INC.,
27 and/or DOES 1 through 10 are therefore alter egos of each other.

28 20. Adherence to the fiction of the separate existence of Defendants would permit

an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name CANON.

21. Plaintiff further alleges, upon information and belief, that Defendants CANON BUSINESS PROCESS SERVICES, INC. and CANON U.S.A., INC. are alter egos of each other for the following reasons:

- (a) Per CANON BUSINESS PROCESS SERVICES, INC.'s website,¹ CANON BUSINESS PROCESS SERVICES, INC. is a wholly owned subsidiary of CANON U.S.A., INC.;
- (b) As a condition of Plaintiff's employment with CANON BUSINESS PROCESS SERVICES, INC., Plaintiff was required to sign a Corporate Compliance Program Verification Receipt acknowledging receipt and adherence to CANON U.S.A., INC.'s Corporate Compliance Program and Code of Business Ethics and Conduct; and
- (c) On information and belief, CANON BUSINESS PROCESS SERVICES, INC. and CANON U.S.A., INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

22. Defendants are a leading provider of business process services, document management, and managed workforce services. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in New York City, or Melville, New York, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

23. In particular, Plaintiff and other non-party Aggrieved Employees, on

¹ BPO Company | Business Process Outsourcing | Canon, "About Canon," <https://cbps.canon.com/about?tab=about-canon> (last accessed July 27, 2020).

1 information and belief, received the same standardized documents and/or written policies.
2 Upon information and belief, the usage of standardized documents and/or written policies,
3 including new-hire documents, indicate that Defendants dictated policies at the corporate level
4 and implemented them company-wide, regardless of their employees' assigned locations or
5 positions. Upon information and belief, Defendants set forth uniform policies and procedures
6 in several documents provided at an employee's time of hire.

7 24. Upon information and belief, Defendants maintain a centralized Payroll
8 department at their corporate headquarters in in New York City, or Melville, New York,
9 which processes payroll for all non-exempt, hourly paid employees working for Defendants at
10 their various locations and jobsites in California, including Plaintiff and other non-party
11 Aggrieved Employees. Based upon information and belief, Defendants issue the same
12 formatted wage statements to all non-exempt, hourly paid employees in California,
13 irrespective of their work locations. Upon information and belief, Defendants process payroll
14 for departing employees in the same manner throughout the State of California, regardless of
15 the manner in which each employee's employment ends.

16 25. Defendants continue to employ non-exempt or hourly paid employees in
17 California.

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

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

25 28. 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 certain wages for overtime compensation and that they were not receiving certain
28 wages for overtime compensation.

1 29. 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 at least minimum wages for compensation and that they were not receiving at least
4 minimum wages for work that was required to be done off-the-clock. In violation of the
5 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
6 least minimum wages for work done off-the-clock.

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

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

24 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive complete and accurate wage statements in accordance with California law. In
27 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
28 were not provided complete and accurate wage statements.

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

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

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

17 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
19 and expenses other non-party Aggrieved Employees incurred obtaining mandatory physical
20 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

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

26 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to compensate
28 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants

1 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
2 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
3 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

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

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

- 19 (a) The aggrieved employee shall give written notice by online filing
20 (hereinafter "Employee's Notice") to the LWDA and by certified mail
21 to the employer of the specific provisions of the California Labor Code
22 alleged to have been violated, including the facts and theories to support
23 the alleged violations.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).
- 27 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
28 employer and the aggrieved employee by certified mail that it does not

1 intend to investigate the alleged violation within sixty (60) calendar
2 days of the postmark date of the Employee's Notice. Upon receipt of
3 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
4 five (65) calendar days of the postmark date of the Employee's Notice,
5 the aggrieved employee may commence a civil action pursuant to
6 California Labor Code section 2699 to recover civil penalties in addition
7 to any other penalties to which the employee may be entitled.

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

- 12 (a) The aggrieved employee or representative shall give written notice by
13 online filing to the LWDA and by certified mail to the employer of the
14 specific provisions of the California Labor Code alleged to have been
15 violated (other than those listed in Section 2699.5), including the facts
16 and theories to support the alleged violation.
- 17 (b) An aggrieved employee's notice filed with the LWDA pursuant to
18 2699.3(c) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The employer may cure the alleged violation within thirty-three (33)
21 calendar days of the postmark date of the notice. The employer shall
22 give written notice by certified mail within that period of time to the
23 aggrieved employee or representative and the agency if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the employee may commence a
27 civil action pursuant to Section 2699.

28 44. On May 20, 2020, Plaintiff provided written notice by online filing to the

1 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
4 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
5 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
6 Plaintiff PAGA Case Number LWDA-CM-787307-20. A true and correct copy of Plaintiff's
7 written notice to the LWDA and Defendants dated May 20, 2020, is attached hereto as
8 "Exhibit 1."

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

12 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
13 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
14 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
15 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

16 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
17 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
18 provision regulating hours and days of work in any order of the Industrial Welfare
19 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
20 dollars (\$50) for each underpaid employee for each pay period for which the employee was
21 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was underpaid" Labor
23 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
24 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
25 as a private attorney general, seeks assessment and collection of civil penalties under Labor
26 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
27 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
28 and the applicable IWC wage order. Plaintiff, acting in the public interest as private attorney

1 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
2 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
3 IWC wage order.

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

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

11 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
12 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
13 private attorney general, seeks assessment and collection of civil penalties for herself, all other
14 non-party Aggrieved Employees, and the State of California against Defendants for violations
15 of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516,
16 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

17 **FIRST CAUSE OF ACTION**

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

19 **(Against all Defendants)**

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

22 52. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
24 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
25 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
26 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
27 violations of those Labor Code sections not found in section 2699.5, including sections 516
28 and 1182.12.

1 53. Defendants' conduct, as alleged herein, violates numerous sections of the
2 California Labor Code, including, but not limited to, the following:

- 3 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
4 wage order for Defendants' failure to compensate Plaintiff and other
5 non-party Aggrieved Employees with all required overtime pay, as set
6 forth below;
- 7 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
8 applicable IWC wage order for Defendants' failure to compensate
9 Plaintiff and other non-party Aggrieved Employees with at least
10 minimum wages for all hours worked as set forth below;
- 11 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
12 applicable IWC wage order for Defendants' failure to provide Plaintiff
13 and other non-party Aggrieved Employees with meal periods, as set
14 forth below;
- 15 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
16 IWC wage order for Defendants' failure to authorize and permit
17 Plaintiff and other non-party Aggrieved Employees to take rest periods,
18 as set forth below;
- 19 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
20 wage order for failure to provide accurate and complete wage statements
21 to Plaintiff and other non-party Aggrieved Employees, as set forth
22 below;
- 23 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
24 IWC wage order for failure to maintain payroll records as set forth
25 below;
- 26 (g) Violation of Labor Code section 204 for failure to pay all earned wages
27 during employment as set forth below;
- 28 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all

1 earned wages upon termination as set forth below;

- 2 (i) Violation of Labor Code section 222.5 for failing to compensate other
3 non-party Aggrieved Employees for mandatory physical examinations
4 and/or drug testing, as set forth below; and
- 5 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
6 and other non-party Aggrieved Employees for all business expenses
7 necessarily incurred, as set forth below.

8 **FAILURE TO PAY OVERTIME**

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

10 54. Labor Code section 1198 makes it illegal to employ an employee under
11 conditions of labor that are prohibited by the applicable wage order. California Labor Code
12 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
13 be the . . . standard conditions of labor for employees. The employment of any employee . . .
14 under conditions of labor prohibited by the order is unlawful.”

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

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

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

1 58. California Labor Code section 510 codifies the right to overtime compensation
2 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
3 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
4 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
5 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
6 in a day on the seventh (7th) day of work.

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

13 60. First, during the relevant time period, Defendants had, and continue to have, a
14 company-wide policy and/or practice of requiring employees to complete work-related tasks
15 while off-the-clock. For example, Plaintiff spent at least one (1) hour per day off-the-clock
16 responding to managers over the phone, checking and confirming the status of document
17 deliveries, and communicating with third-party contacts, such as vendors, to place and
18 confirm supply orders. Thus, Defendants failed to track the time Plaintiff and other non-party
19 Aggrieved Employees spent working before and after their scheduled shifts, and Plaintiff and
20 other non-party Aggrieved Employees.

21 61. Second, during the relevant period, Defendants had, and continue to have, a
22 company-wide policy and/or practice of understaffing their locations, while assigning heavy
23 workloads and implementing strict deadlines, resulting in a failure to provide Plaintiff and
24 other non-party Aggrieved Employees with adequate meal period coverage. As a result of this
25 lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were not
26 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled
27 to receive a meal period. For example, Plaintiff was regularly forced to forego her meal
28 periods five (5) to six (6) days per week in order to complete the tasks and duties Defendants

1 assigned to her, including preparing legal documents on stringent deadlines. Thus, Plaintiff
2 and other non-party Aggrieved Employees missed or had meal periods interrupted in order to
3 complete their assigned workloads. As a further example, if Plaintiff could find the time to
4 take a meal period at all, she was regularly interrupted and had her meal periods cut short by
5 management and/or supervisors requesting her assistance with work-related tasks.

6 62. Further, on information and belief, because Defendants frowned upon
7 employees accruing meal period penalties, Defendants pressured Plaintiff and other non-party
8 Aggrieved Employees to clock out for meal periods and/or adjusted employee time records to
9 reflect compliant meal periods, regardless of whether they had received a compliant meal
10 period, in order to strictly limit meal penalties that Defendants would otherwise owe. Thus,
11 Plaintiff and other non-party Aggrieved Employees performed work during meal periods for
12 which they were not paid. Defendants did not pay Plaintiff and other non-party Aggrieved
13 Employees for the time they continued to perform tasks during meal periods

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

22 64. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
23 the balance of overtime compensation as required by California law, violates the provisions of
24 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
25 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
26 2699(a), (f), and (g).

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28 //

1 **FAILURE TO PAY MINIMUM WAGES**

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

3 65. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
4 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
5 to be paid to employees, and the payment of a wage less than the minimum so fixed is
6 unlawful. Compensable work time is defined by the applicable wage order as “the time
7 during which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
9 Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

10 66. As set forth above, during the relevant time period, Defendants required
11 Plaintiff and other non-party Aggrieved Employees to complete work-related tasks while off-
12 the-clock, but did not compensate them for this time. Additionally, as a result Defendants’
13 policy and/or practice of understaffing while assigning heavy workloads and stringent
14 deadlines, and resultant lack of meal period coverage, Plaintiff and other non-party Aggrieved
15 Employees were impeded from taking all uninterrupted meal periods to which they were
16 entitled and were required to work off-the-clock.

17 67. Moreover, Defendants maintained and implemented a company-wide policy of
18 requiring all employees to travel to a medical facility on their own time and using their own
19 personal means of transportation to undergo mandatory drug testing and/or physical
20 examinations. At all times, Defendants were in control of scheduling the time period for the
21 testing and/or physical examinations, selecting the provider or facility where the testing and/or
22 physical examinations were to take place, and determining the scope of the testing and/or
23 physical examinations. Defendants gave other non-party Aggrieved Employees strict
24 instructions to obtain drug testing and/or physical examinations, and other non-party
25 Aggrieved Employees underwent the testing for the sole benefit of Defendants. Other non-
26 party Aggrieved Employees were required to travel in their own personal vehicles or obtain an
27 alternate means of transportation and spend time undergoing Defendants’ mandatory drug test
28 and/or physical examination. However, Defendants did not compensate other non-party

1 Aggrieved Employees for the time they spent traveling to and from the medical facilities and
2 undergoing the mandatory drug testing and/or physical examinations.

3 68. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
4 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
5 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
6 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
7 1194, 1197, and 1198.

8 69. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
9 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
10 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
11 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

14 70. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
15 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and
16 non-party Aggrieved Employees' employment by Defendants.

17 71. At all relevant times herein set forth, California Labor Code section 512(a)
18 provides that an employer may not require, cause, or permit an employee to work for a period
19 of more than five (5) hours per day without providing the employee with a meal period of not
20 less than thirty (30) minutes, except that if the total work period per day of the employee is
21 not more than six (6) hours, the meal period may be waived by mutual consent of both the
22 employer and the employee. Under California law, first meal periods must start after no more
23 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
24 2012).

25 72. At all relevant times herein set forth, California Labor Code section 226.7,
26 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
27 meal period mandated by an applicable order of the IWC.

28 73. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,

1 and the applicable IWC Wage Order also require employers to provide a second meal period
2 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
3 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
4 total hours worked is no more than twelve (12) hours, the second meal period may be waived
5 by mutual consent of the employer and the employee only if the first meal period was not
6 waived.

7 74. First, as stated, Defendants had, and continue to have, a company-wide policy
8 and/or practice of understaffing their locations and assigning demanding workloads and
9 stringent deadlines, resulting in a failure to provide Plaintiff and other non-party Aggrieved
10 Employees with adequate meal period coverage. Further, Defendants had a company-wide
11 practice of failing to adhere to a schedule of meal periods, which further caused Plaintiff and
12 other non-party Aggrieved Employees to not be relieved of their duties for compliant meal
13 periods. As a result, Plaintiff and other non-party Aggrieved Employees were forced to work
14 in excess of five (5) hours before taking a meal period, had their meal periods interrupted,
15 and/or had to forgo their meal periods altogether in order to complete their assigned
16 workloads. For example, Plaintiff was forced to forego meal periods five (5) to six (6) days
17 per week in order to complete the tasks and duties Defendants assigned to her, including
18 preparing legal documents in accordance with stringent deadlines. Furthermore, if Plaintiff
19 could find the time to take a meal period at all, she was regularly interrupted and had her meal
20 periods cut short by management and/or supervisors requesting her assistance with work-
21 related tasks, as well as phone calls and text messages from managers and vendors.

22 75. Second, on information and belief, because Defendants frowned upon
23 employees accruing meal period penalties, Defendants' management would adjust Plaintiff's
24 and other non-party Aggrieved Employees' time records and/or pressure Plaintiff and other
25 non-party Aggrieved Employees to clock out for meal periods and continue working, in order
26 to strictly limit meal penalties that would need to be paid by Defendants. For example,
27 Plaintiff was explicitly instructed by her supervisor to clock out and continue working during
28 her meal periods, and on days that she failed to do so, would regularly have her time sheet

1 adjusted by her supervisor to reflect a compliant meal period. Plaintiff and other non-party
2 Aggrieved Employees worked through meal periods or had their meal periods interrupted,
3 because there were not enough employees on duty to handle the assigned workload.

4 76. Third, Defendants did not provide Plaintiff and other non-party Aggrieved
5 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
6 hours in one day. For example, Plaintiff was never given a second meal period even though
7 she often worked shifts longer than ten (10) hours. Plaintiff and other non-party Aggrieved
8 Employees did not sign valid meal period waivers on days that they were entitled to meal
9 periods and were not relieved of all duties.

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

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

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

26 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

27 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

28 80. At all relevant times herein set forth, the applicable IWC Wage Order and

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

3 81. At all relevant times, the applicable IWC Wage Order provides that "[e]very
4 employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period" and that the "rest period time shall be
6 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
7 hours or major fraction thereof" unless the total daily work time is less than three and one-half
8 (3½) hours.

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

17 83. Pursuant to the applicable IWC Wage Order and California Labor Code section
18 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
19 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
20 required rest period was not authorized and permitted.

21 84. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
23 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
24 Defendants' company-wide practices, including understaffing their locations and assigning
25 demanding workloads and stringent deadlines, prevented Plaintiff and other non-party
26 Aggrieved Employees from being relieved of all duty to take compliant rest periods. As a
27 result, Plaintiff missed her rest periods or would have her rest periods interrupted. Defendants
28 also failed to schedule rest periods, which, coupled with Defendants' understaffing and heavy

workload demands, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

85. Furthermore, upon information and belief, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and/or other non-party Aggrieved Employees remain on Defendants' premises during their rest periods. Defendants' company-wide on-premises rest period policy prevented Plaintiff and/or other non-party Aggrieved Employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

86. As a result of Defendants' practices and policies, Plaintiff and other non-party Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all ten (10) minute rest periods to which they were entitled. For example, throughout her employment, Plaintiff had to forego rest periods entirely, due to Defendants' policy of assigning heavy workloads and stringent deadlines which required her to respond to phone calls and text messages from managers and vendors at all times, while failing to provide sufficient coverage.

87. Defendants also have 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, Plaintiff and other non-party Aggrieved Employees have not received premium pay for all missed rest periods.

88. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

89. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal

1 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
2 applicable rates of pay.

3 90. During the relevant time period, Defendants have knowingly and intentionally
4 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
5 inaccurate wage statements. For example, Defendants issued uniform wage statements to
6 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
7 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
8 the pay period, including overtime rates of pay, and the corresponding number of hours
9 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
10 226(a)(5), and 226(a)(9).

11 91. Because Defendants did not record the time Plaintiff and other non-party
12 Aggrieved Employees spent working off-the-clock and deducted time from their records for
13 meal periods that were interrupted and/or missed (and therefore time for which they should
14 have been paid), Defendants did not list the correct amount of gross wages and net wages
15 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
16 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
17 number of hours worked by Plaintiff and other non-party Aggrieved Employees in violation of
18 section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay
19 period and corresponding accurate number of work hours worked at each hourly rate in
20 violation of section 226(a)(9).

21 92. The wage statement deficiencies also include, without limitation, failing to list
22 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
23 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
24 only the last four digits of his or her social security number or an employee identification
25 number other than a social security number; failing to list the name and address of the legal
26 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
27 employees were paid; and/or failing to state all hours worked as a result of not recording or
28 stating hours worked off-the-clock.

1 93. California Labor Code section 1198 provides that the maximum hours of work
2 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
3 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
4 employment of any employees for longer hours than those fixed by the order or under
5 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
6 Wage Order, employers are required to keep accurate time records showing when the
7 employee begins and ends each work period and meal period. During the relevant time
8 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
9 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
10 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
11 and/or policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records
12 by deducting meal periods or recording that compliant meal periods were taken, regardless of
13 if or when meal periods were actually taken, and thereby failed to keep accurate records of
14 meal period start and stop times for Plaintiff and other non-party Aggrieved Employees in
15 violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and
16 other non-party Aggrieved Employees with second 30-minute meal periods to which they
17 were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

28 95. Because Defendants’ violations of 226(a) and 1174(d) were committed against

1 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
2 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
3 1174.5, and/or 2699(a), (f), and (g).

4 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
5 **VIOLATION OF LABOR CODE SECTION 204**

6 96. At all relevant times herein set forth, California Labor Code section 204
7 requires that all wages earned by any person in any employment between the 1st and the 15th
8 days, inclusive, of any calendar month, other than those wages due upon termination of an
9 employee, are due and payable between the 16th and the 26th day of the month during which
10 the labor was performed. Labor Code section 204 further provides that all wages earned by
11 any person in any employment between the 16th and the last day, inclusive, of any calendar
12 month, other than those wages due upon termination of an employee, are due and payable
13 between the 1st and the 10th day of the following month.

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

20 98. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 other non-party Aggrieved Employees all wages due to them within any time period specified
22 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
23 wages, and/or meal and rest period premium wages.

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

26 **FAILURE TO PAY WAGES UPON TERMINATION**
27 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

28 100. At all times relevant herein set forth, Labor Code sections 201 and 202 provide

1 that if an employer discharges an employee, the wages earned and unpaid at the time of
2 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
3 her employment, his or her wages shall become due and payable not later than seventy-two
4 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
5 his or her intention to quit, in which case the employee is entitled to his or her wages at the
6 time of quitting.

7 101. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
8 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
9 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
10 period premium wages, either at the time of discharge, or within seventy-two (72) hours of
11 their leaving Defendants' employ.

12 102. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
13 who are no longer employed by Defendants their wages earned and unpaid at the time of
14 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
15 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
16 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
17 2699(a), (f), and (g).

18 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**
19 **VIOLATION OF LABOR CODE SECTION 222.5**

20 103. At all relevant times herein, California Labor Code section 222.5 requires
21 employers to pay for the costs an employee incurs for obtaining any required medical or
22 physical examination.

23 104. During the relevant time period, Defendants implemented, on a company-wide
24 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo a
25 mandatory drug test and/or physical examination, but required them to do so at their own
26 expense. As stated, Defendants had a company-wide policy requiring that all employees
27 travel to a designated medical facility on their own time and using their own personal means
28 of transportation or obtain alternate transportation to undergo drug testing and/or physical

1 examinations. At all times, Defendants were in control of scheduling the time period for the
2 testing and/or physical examinations, selecting the provider/facility where the testing and/or
3 physical examinations were to take place, and determining the scope of the testing and/or
4 physical examinations.

5 105. Other non-party Aggrieved Employees were required to utilize their own
6 vehicles or obtain an alternate means of transportation to travel to medical facilities selected
7 by Defendants and spend time undergoing Defendants' mandatory drug testing and/or
8 physical examinations. However, Defendants did not compensate other non-party Aggrieved
9 Employees for the time they spent traveling to and from their drug tests and/or physical
10 examinations or for the time they spent undergoing the testing and/or examinations, and/or
11 reimburse them for the travel expenses they incurred getting to and from the medical facilities.
12 Defendants' policy and/or practice of not paying for all costs other non-party Aggrieved
13 Employees incurred obtaining mandatory drug tests and/or physical examinations violates
14 California Labor Code section 222.5.

15 106. Other non-party Aggrieved Employees are therefore entitled to recover civil
16 penalties pursuant to Labor Code section 2699(a), (f), and (g).

17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

18 **VIOLATION OF LABOR CODE SECTION 2802**

19 107. At all times herein set forth, California Labor Code section 2802 provides that
20 an employer must reimburse employees for all necessary expenditures and losses incurred by
21 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
22 to prevent employers from passing off their cost of doing business and operating expenses on
23 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
24 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen the
25 employer requires the use of tools or equipment or they are necessary to the performance of a
26 job, such tools and equipment shall be provided and maintained by the employer, except that
27 an employee whose wages are at least two (2) times the minimum wage may provide and
28 maintain hand tools and equipment customarily required by the particular trade or craft."

1 108. During the relevant time period, Defendants had a company-wide policy of
2 requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
3 cellular phones and cellular data to carry out their job duties, but Defendants failed to
4 reimburse them for the costs of their work-related cellular phone expenses. Plaintiff and other
5 non-party Aggrieved Employees were required to use their personal cellular phones to
6 complete their work-related tasks, such as discussing assignments with managers and
7 communicating with mail carriers. For example, Plaintiff was required to use her personal
8 cellular phone for four (4) or more hours per day to respond to her supervisor, check the status
9 of mailed deliveries, and order office supplies. Although Defendants required Plaintiff and
10 other non-party Aggrieved Employees to utilize their personal cellular phones to carry out
11 their work-related responsibilities, Defendants failed to reimburse them for this cost.

12 109. Also, as stated, Defendants had, and continue to have, a company-wide policy of
13 requiring other non-party Aggrieved Employees to travel in their own personal vehicles or
14 obtain alternate transportation to medical facilities to obtain mandatory drug testing and/or
15 physical examinations, but did not reimburse them for their travel expenses, including mileage.
16 Defendants maintained and implemented a company-wide policy of requiring employees to
17 travel to a medical facility on their own time, using their own personal vehicles or alternate
18 transportation, to undergo mandatory drug testing and/or physical examinations. At all times,
19 Defendants were in control of scheduling the date and time for the testing and/or physical
20 examinations, selecting the provider or facility where the testing and/or physical examinations
21 were to take place, and determining the scope of the testing and/or physical examinations.

22 110. Defendants gave other non-party Aggrieved Employees strict instructions to
23 obtain drug testing and physical examinations, and other non-party Aggrieved Employees
24 underwent the testing and examination for the sole benefit of Defendants. Other non-party
25 Aggrieved Employees followed Defendants' instructions, traveled in their personal vehicles or
26 alternate means of transportation to medical facilities, and underwent Defendants' drug
27 testing, but were not reimbursed for their mileage to and from the medical facilities. Thus,
28 although Defendants required other non-party Aggrieved Employees to undergo drug testing

1 and/or physical examinations, Defendants failed to reimburse them for their travel expenses.

2 111. Defendants could have provided Plaintiff and other non-party Aggrieved
3 Employees with the actual tools for use on the job, such as company phones and company
4 transportation, or Defendants could have reimbursed employees for the costs of their cellular
5 phone, mileage, and travel expenses. Instead, Defendants passed these operating costs off
6 onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did
7 not earn at least two (2) times the minimum wage.

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

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

14 **REQUEST FOR JURY TRIAL**

15 Plaintiff requests a trial by jury.

16 **PRAYER FOR RELIEF**

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

19 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
20 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

21 **As to the First Cause of Action**

22 2. That the Court declare, adjudge and decree that Defendants violated the
23 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
24 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
25 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
26 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
27 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
28 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay

1 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
2 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
3 examinations); and 2802 (by failing to reimburse business expenses);

4 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
5 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
6 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and
7 2802;

8 4. For attorneys' fees and costs pursuant to California Labor Code section
9 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
10 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
11 1182.12, 1194, 1197, 1198, and 2802;

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

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

15
16 Dated: July 31, 2020

Respectfully submitted,

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18 Capstone Law APC

19
20 By: 

21 Mark A. Ozzello
22 Brandon K. Brouillette
23 Brooke W. Waldrop

24 Attorneys for Plaintiff Jamicha Horace
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EXHIBIT 1

JULIAN QUATTLEBAUM
310.712.8154 Direct
Julian.Quattlebaum@capstonelawyers.com

May 20, 2020

VIA ONLINE SUBMISSION

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

Subject: *Jamicha Horace v. Canon Business Process Services, Inc., et al.*

Dear PAGA Administrator:

This office represents Jamicha Horace in connection with her claims under the California Labor Code. Ms. Horace was an employee of CANON BUSINESS PROCESS SERVICES, INC. and/or CANON SOLUTIONS AMERICA, INC. For the purpose of this letter, Ms. Horace collectively refers to these entities as “CANON.”

The employers may be contacted directly at the addresses below:

CANON BUSINESS PROCESS SERVICES, INC.
261 MADISON AVENUE, 3RD FLOOR
NEW YORK NY 10016

CANON SOLUTIONS AMERICA, INC.
ONE CANON PARK
MELVILLE NY 11747

CANON U.S.A., INC.
ONE CANON PARK
MELVILLE NY 11747

Ms. Horace 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. Horace seeks relief on behalf of herself, the State of California, and other persons who are or were employed by CANON 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.

CANON employed Ms. Horace as a non-exempt, hourly paid employee, including as a Records Tech I/Records Case Clerk, from April 2019 to February 2020. Ms. Horace worked for CANON at an office location in San Francisco, California. During her employment, Ms. Horace typically worked eight (8) to ten (10) hours per day and five (5) to six (6) days per week. Ms. Horace's primary job duties included, without limitation, preparing, faxing and mailing legal documents; ordering office supplies; and maintaining the office premises.

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

CANON's Company-Wide and Uniform Payroll and HR Practices

CANON BUSINESS PROCESS SERVICES, INC. is a Delaware corporation, while CANON SOLUTIONS AMERICA, INC. and CANON U.S.A., INC. are New York corporations. Together, they are a leading provider of business process services, document management, and managed workforce services. Upon information and belief, CANON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in New York City or Melville, New York, for all non-exempt, hourly paid employees working for CANON in California, including Ms. Horace and other aggrieved employees. At all relevant times, CANON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Horace and other aggrieved employees, regardless of their location or position.

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

¹ These facts, theories, and claims are based on Ms. Horace's experience and counsel's review of those records currently available relating to Ms. Horace'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. Horace 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.

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.

CANON willfully failed to pay all overtime wages owed to Ms. Horace and other aggrieved employees. During the relevant time period, Ms. Horace 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 period, CANON had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. For example, Ms. Horace spent at least one (1) hour per day off-the-clock responding to managers over the phone, checking and confirming the status of document deliveries and communicating with third-party contacts, such as vendors, to place and confirm supply orders. Thus, CANON failed to track the time spent working before and after scheduled shifts, and Ms. Horace and other aggrieved employees received no compensation for this time.

Second, CANON had, and continues to have, a company-wide policy and/or practice of understaffing its locations, while assigning heavy workloads and implementing strict deadlines, resulting in a failure to provide Ms. Horace and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Horace and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Horace was regularly forced to forego meal periods five (5) to six (6) days per week in order to complete the tasks and duties CANON assigned to her, including preparing legal documents to meet the stringent deadlines she was given. Thus, Ms. Horace and other aggrieved employees missed or had meal periods interrupted in order to complete their assigned workloads. Furthermore, if Ms. Horace could find the time to take a meal period at all, she was regularly interrupted and had her meal period cut short by management and/or supervisors requesting her assistance with work-related tasks.

Further, on information and belief, because CANON frowned upon employees accruing meal period penalties, CANON pressured Ms. Horace 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 CANON would otherwise owe. Thus, Ms. Horace and other aggrieved employees performed work during meal periods for which they were not paid. CANON did not pay Ms. Horace and other aggrieved employees for the time they continued to perform tasks during meal periods.

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

Because Ms. Horace 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. Horace and other aggrieved employees were not paid overtime wages

for all of the overtime hours they actually worked. CANON's failure to pay Ms. Horace 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, CANON did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, CANON paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CANON 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 rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, CANON failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Horace 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. 1 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, § 11010(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, CANON required Ms. Horace and other aggrieved employees to complete work-related tasks while off-the-clock, but did not compensate them for this time. Additionally, as a result CANON's policy and/or practice of understaffing while assigning heavy workloads and stringent deadlines, and resultant lack of meal period coverage, Ms. Horace 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.

Moreover, CANON maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal means of transportation to undergo mandatory drug testing and/or physical examinations. However, CANON did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities or for the time they spent undergoing testing and/or physical examinations. At all times, CANON was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. However, CANON did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, CANON did not pay minimum wages for all hours worked by Ms. Horace and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CANON 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, CANON regularly failed to pay at least minimum wages to Ms. Horace 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. Horace 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 break 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.

First, during the relevant time period, CANON had, and continues to have, a company-wide policy and/or practice of understaffing its locations and assigning demanding workloads and stringent deadlines, resulting in a failure to provide Ms. Horace and other aggrieved employees with adequate meal period coverage. Further, CANON had a company-wide practice of failing to adhere to a schedule of meal periods, which further caused Ms. Horace and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Ms. Horace and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether in order to complete their assigned workloads. For example, Ms. Horace was forced to forego meal periods five (5) to six (6) days per week in order to complete the tasks and duties CANON assigned to her, including preparing legal documents to meet the stringent deadlines she was provided. Furthermore, if Ms. Horace could find the time to take a meal period at all, she was regularly interrupted and had her meal period cut short by management and/or supervisors requesting her assistance with work-related tasks, as well as phone calls and text messages from managers and vendors.

Second, on information and belief, because CANON frowned upon employees accruing meal period penalties, CANON's management would adjust Ms. Horace's and other aggrieved employees' time records and/or pressure Ms. Horace and aggrieved employees to clock out for meal periods and continue working, in order to strictly limit meal penalties that would need to be paid by CANON. For example, Ms. Horace was explicitly instructed by her supervisor to clock out and continue working during her meal periods, and on days that she failed to do so, would regularly have her time sheet adjusted by her supervisor to reflect a compliant meal period. Ms. Horace 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 assigned workload.

Third, CANON did not provide Ms. Horace and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Horace was never given a second meal period even though she often worked shifts longer than ten (10) hours. Ms. Horace and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, CANON knew or should have known that, as a result of these policies or practices, Ms. Horace and other aggrieved employees were prevented from being relieved of all duties to take timely, uninterrupted meal periods. CANON further knew or should have known that it did not pay Ms. Horace and other aggrieved employees all meal period premium wages when meal periods were late, interrupted, shortened, or missed.

CANON also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Horace and other aggrieved employees have not received all premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that CANON did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because CANON 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, CANON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Horace 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, CANON regularly failed to authorize and permit Ms. Horace 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, CANON's company-wide practices, including understaffing while assigning heavy workloads and strict deadlines prevented Ms. Horace and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, CANON failed to schedule rest periods, which, coupled with CANON's failure to provide adequate rest period coverage, further led to Ms. Horace and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, during the relevant time period, CANON maintained implemented a company-wide on-premises rest period policy, which mandated that other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, CANON's company-wide on-premises rest period policy prevented other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of CANON's practices and policies, Ms. Horace 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. For example, throughout her employment, Ms. Horace had to forego rest periods entirely, due to CANON's policy of assigning heavy workloads and stringent deadlines which required her to respond to phone calls and text messages from managers and vendors, while failing to provide sufficient coverage.

CANON 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 and permitted. Because of this practice and/or policy, Ms. Horace and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CANON did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because CANON 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, CANON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Horace 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. CANON has not provided Ms. Horace 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, CANON has knowingly and intentionally provided Ms. Horace and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CANON issued uniform wage statements to Ms. Horace and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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, CANON violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because CANON did not record the time Ms. Horace and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), CANON did not list the correct amount of gross wages and net wages earned by Ms. Horace and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, CANON failed to accurately list the total number of the hours worked by Ms. Horace 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 CANON did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, CANON 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). CANON 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).

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 name and address of the legal entity that is the employer; 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), CANON willfully failed to maintain accurate payroll records for Ms. Horace 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, CANON failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep records of work period and meal period start and stop times for Ms. Horace and other aggrieved employees in violation of section 1198. As stated, CANON engaged in a company-wide practice and/or policy of falsifying Ms. Horace’s and other aggrieved employees’ 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 meal start and end times for Ms. Horace and other aggrieved employees. Furthermore, in light of CANON’s failure to provide Ms. Horace and other aggrieved employees with second 30-minute meal periods to which they were entitled, CANON kept no records of meal start and end times for second meal periods.

Because CANON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Horace 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. Horace 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. Horace 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, CANON failed to pay Ms. Horace 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. Horace 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.

CANON willfully failed to pay Ms. Horace and other aggrieved employees who are no longer employed by CANON 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 CANON's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Horace 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 § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

At all times relevant herein, CANON implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory drug test and/or physical examination, but required them to do so at their own expense. As stated, CANON had a company-wide policy requiring that all employees travel to a designated medical facility on their own time and using their own personal means of transportation or obtain alternate transportation to undergo drug testing and/or physical examinations. At all times, CANON was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider/facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations.

However, CANON did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. CANON's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Other aggrieved employees are therefore 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 § 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 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, CANON had a company-wide policy of requiring Ms. Horace and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but CANON failed to reimburse them for the costs of their work-related cellular phone expenses. Ms. Horace and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing assignments with managers and communicating with mail carriers. For example, Ms. Horace was required to use her personal cellular phone four (4) or more hours per day to respond to her supervisor, check the status of mailed deliveries, and order office supplies. Although CANON required Ms. Horace and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, CANON failed to reimburse them for this cost.

Second, as stated, CANON had and continues to have, a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles or obtain alternate transportation to medical facilities to obtain mandatory drug testing and/or physical examinations. Although CANON required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, CANON never reimbursed them for their travel expenses.

CANON could have provided Ms. Horace and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, or CANON could have reimbursed employees for the costs of their cellular phone, mileage, and travel expenses. Instead, CANON passed these operating costs off onto Ms. Horace and other aggrieved employees. At all relevant times, Ms. Horace did not earn at least two (2) times the minimum wage.

Thus, CANON 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. Horace 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).

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.” CANON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Horace’s and other aggrieved employees’ rights by violating various sections of the

California Labor Code.

Accordingly, Ms. Horace 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. Horace, 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 CANON for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Horace 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. Horace's reasonable attempt to settle her dispute with CANON prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform CANON of Ms. Horace's aforementioned grievances and the proposed remedies as detailed below, while affording CANON a reasonable opportunity to satisfy Ms. Horace's demands.

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

1. CANON shall pay Ms. Horace and all other aggrieved employees employed by CANON at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. CANON 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. CANON shall conduct a survey or interview all current and former aggrieved employees in California who worked for CANON 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 mandatory medical examinations, travel, cellular phone expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. CANON 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. CANON 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. CANON shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for CANON's benefit, including, but not limited to, costs of

mandatory medical examinations, travel, and cellular phone expenses, as required by Labor Code sections 222.5 and 2802.

6. CANON shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. CANON shall provide Ms. Horace and all aggrieved employees employed by CANON 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. CANON 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. 1-2001, 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:

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

Best Regards,



Julian Quattlebaum

Copy: CANON BUSINESS PROCESS SERVICES, INC. (via U.S. Certified Mail); CANON SOLUTIONS AMERICA, INC. (via U.S. Certified Mail); CANON U.S.A., INC. (via U.S. Certified Mail)