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

JONATHAN SANTIAGO, individually, and
on behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;
ADRIAN AVILA, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

CIGNA HEALTH & LIFE INSURANCE
COMPANY, an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
10/06/2022
By: Nay Saelee, Deputy Clerk

Case No.: VCU283599

Honorable David C. Mathias
Department 1

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES &
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE
§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);

- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.;
- (11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COME NOW, Plaintiffs JONATHAN SANTIAGO (“Plaintiff SANTIAGO”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. (“PAGA”), and ADRIAN AVILA (“Plaintiff AVILA” and together with Plaintiff SANTIAGO as “Plaintiffs”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to PAGA, and allege as follows:

JURISDICTION AND VENUE

1. This class and representative action is brought pursuant to the California Code of Civil Procedure section 382 and California Labor Code section 2698, et seq. The monetary damages and restitution and civil penalties sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiffs, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and

1 belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or
2 otherwise intentionally avails itself of the California market so as to render the exercise of
3 jurisdiction over it by California courts consistent with traditional notions of fair play and
4 substantial justice.

5 4. Venue is proper in this Court because, upon information and belief, Defendant
6 maintains offices, has agents, employs individuals, and/or transacts business in the State of
7 California, including the County of Tulare. The majority of the acts and omissions alleged
8 herein relating to Plaintiff, the other class members, and the other aggrieved employees took
9 place in the State of California, including the County of Tulare.

10 **PARTIES**

11 5. Plaintiff JONATHAN SANTIAGO is an individual residing in the State of
12 California, County of Tulare.

13 6. Plaintiff ADRIAN AVILA is an individual residing in the State of California.

14 7. Defendant CIGNA HEALTH & LIFE INSURANCE COMPANY, at all times
15 herein mentioned, was and is, upon information and belief, an employer whose employees are
16 engaged throughout the State of California, including the County of Tulare.

17 8. At all relevant times, Defendant CIGNA HEALTH & LIFE INSURANCE
18 COMPANY was the “employer” of Plaintiffs within the meaning of all applicable California
19 laws and statutes.

20 9. At all times herein relevant, Defendants CIGNA HEALTH & LIFE
21 INSURANCE COMPANY and DOES 1 through 100, and each of them, were the agents,
22 partners, joint venturers, joint employers, representatives, servants, employees, successors-in-
23 interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were
24 acting within the course and scope of their authority as such agents, partners, joint venturers,
25 joint employers, representatives, servants, employees, successors, co-conspirators and/or
26 assigns, and all acts or omissions alleged herein were duly committed with the ratification,
27 knowledge, permission, encouragement, authorization and/or consent of each defendant
28 designated as a DOE herein.

10. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiffs, the other class members, and the other aggrieved employees as alleged in this Complaint. Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

11. Defendant CIGNA HEALTH & LIFE INSURANCE COMPANY and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

12. Plaintiffs further allege that Defendants including the unknown defendants identified as DOES, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs, the other class members, and the other aggrieved employees so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

13. Plaintiffs bring this action on their own behalf and on behalf of all other members of the general public similarly situated, and, thus, seek class certification under California Code of Civil Procedure section 382.

14. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from August 19, 2016 to final judgment and who reside in California.

15. Plaintiffs reserve the right to establish subclasses as appropriate.

16. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is

1 unknown to Plaintiffs at this time; however, the class is estimated to be
2 greater than fifty (50) individuals and the identity of such membership is
3 readily ascertainable by inspection of Defendants' employment records.

4 b. Typicality: Plaintiffs' claims are typical of all other class members' as
5 demonstrated herein. Plaintiffs will fairly and adequately protect the
6 interests of the other class members with whom he has a well-defined
7 community of interest.

8 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
9 each class member, with whom he has a well-defined community of
10 interest and typicality of claims, as demonstrated herein. Plaintiffs have
11 no interest that is antagonistic to the other class members. Plaintiffs'
12 attorneys, the proposed class counsel, are versed in the rules governing
13 class action discovery, certification, and settlement. Plaintiffs have
14 incurred, and during the pendency of this action will continue to incur,
15 costs and attorneys' fees, that have been, are, and will be necessarily
16 expended for the prosecution of this action for the substantial benefit of
17 each class member.

18 d. Superiority: A class action is superior to other available methods for the
19 fair and efficient adjudication of this litigation because individual joinder
20 of all class members is impractical.

21 e. Public Policy Considerations: Certification of this lawsuit as a class
22 action will advance public policy objectives. Employers of this great
23 state violate employment and labor laws every day. Current employees
24 are often afraid to assert their rights out of fear of direct or indirect
25 retaliation. However, class actions provide the class members who are
26 not named in the complaint anonymity that allows for the vindication of
27 their rights.

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1 17. There are common questions of law and fact as to the class members that
2 predominate over questions affecting only individual members. The following common
3 questions of law or fact, among others, exist as to the members of the class:

- 4 a. Whether Defendants' failure to pay wages, without abatement or
5 reduction, in accordance with the California Labor Code, was willful;
- 6 b. Whether Defendants' had a corporate policy and practice of failing to
7 pay their hourly-paid or non-exempt employees within the State of
8 California for all hours worked and missed (short, late, interrupted,
9 and/or missed altogether) meal periods and rest breaks in violation of
10 California law;
- 11 c. Whether Defendants required Plaintiffs and the other class members to
12 work over eight (8) hours per day, and over forty (40) hours per week,
13 and/or over six (6) days per workweek and failed to pay the legally
14 required overtime compensation to Plaintiffs and the other class
15 members;
- 16 d. Whether Defendants failed to use all non-discretionary compensation,
17 e.g., earned commissions, non-discretionary bonuses, non-discretionary
18 monetary and non-monetary incentives, non-discretionary production
19 and/or performance pay, and/or shift differentials to calculate the regular
20 rate of pay used to calculate the overtime rate for the payment of
21 overtime wages where Plaintiffs and the other class members earned
22 commissions, non-discretionary bonuses, non-discretionary monetary
23 and non-monetary incentives, non-discretionary production and/or
24 performance pay, and/or shift differentials and overtime wages in the
25 same workweek;
- 26 e. Whether Defendants deprived Plaintiffs and the other class members of
27 meal and/or rest periods or required Plaintiffs and the other class
28 members to work during meal and/or rest periods without compensation;

- f. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiffs and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- j. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- k. Whether Defendants failed to reimburse Plaintiffs and the other class members for necessary business-related expenses and costs;
- l. Whether Defendants' conduct was willful or reckless;
- m. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- n. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- o. Whether Plaintiffs and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

18. At all times herein set forth, PAGA was applicable to Plaintiff SANTIAGO's employment by Defendants.

19. At all times herein set forth, PAGA was applicable to Plaintiff AVILA's employment by Defendants.

20. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the

1 LWDA for violations of the California Labor Code may, as an alternative, be recovered
2 through a civil action brought by an aggrieved employee on behalf of herself and other current
3 or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

4 21. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
5 employee,” who is any person that was employed by the alleged violator and against whom
6 one or more of the alleged violations was committed.

7 22. Plaintiff SANTIAGO was employed by Defendants and the alleged violation
8 was committed against him during his time of employment and he is, therefore, an aggrieved
9 employee. Plaintiff AVILA was employed by Defendants and the alleged violation was
10 committed against him during his time of employment and he is, therefore, an aggrieved
11 employee. Plaintiffs and the other employees are “aggrieved employees” as defined by
12 California Labor Code section 2699(c) in that they are all current or former employees of
13 Defendants, and one or more of the alleged violations were committed against them.

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

17 a. The aggrieved employee shall give written notice by online submission
18 (hereinafter “Employee’s Notice”) to the Labor & Workforce
19 Development Agency (hereinafter “LWDA”) and by U.S. Certified Mail
20 to the employer of the specific provisions of the California Labor Code
21 alleged to have been violated, including the facts and theories to support
22 the alleged violations.

23 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
24 employer and the aggrieved employee by certified mail that it does not
25 intend to investigate the alleged violation within sixty (60) calendar days
26 of the postmark date of the Employee’s Notice. Upon receipt of the
27 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
28 (65) calendar days of the postmark date of the Employee’s Notice, the

aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

24. On May 11, 2020, Plaintiff SANTIAGO provided written notice by online submission to the LWDA and by U.S. Certified Mail to Defendant CIGNA HEALTH & LIFE INSURANCE COMPANY of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff SANTIAGO has not received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff's notice.

25. On July 30, 2020, Plaintiff AVILA provided written notice by online submission to the LWDA and by U.S. Certified Mail to Defendant CIGNA HEALTH & LIFE INSURANCE COMPANY of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff AVILA has not received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff's notice.

26. Therefore, Plaintiffs have satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 512(a), 558(a)(1)(2), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

27. At all relevant times set forth herein, Defendants employed Plaintiffs and other aggrieved hourly-paid or non-exempt employees who worked for any of the Defendants in the State of California, including, but not limited to all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned commissions, non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-discretionary production and/or performance pay, and/or shift differentials which was not used to calculate the correct regular rate of pay used to

1 calculate the overtime rate (hereinafter collectively referred to as the “other aggrieved
2 employees”).

3 28. On October 30, 2020, Plaintiff AVILA brought an action pursuant to Labor
4 Code section 2699 in the Superior Court for the State of California, County of Tulare entitled
5 *Avila v. Cigna Health & Life Insurance Company*, Case No. VCU284920.

6 **GENERAL ALLEGATIONS**

7 29. At all relevant times set forth herein, Defendants employed Plaintiffs and other
8 persons as hourly-paid or non-exempt employees within the State of California, including the
9 County of Tulare.

10 30. Defendants, jointly and severally, employed Plaintiff SANTIAGO as an hourly-
11 paid, non-exempt employee, from approximately October 2017 to approximately August 2019,
12 in the State of California, County of Tulare.

13 31. Defendants, jointly and severally, employed Plaintiff AVILA as an hourly-paid,
14 non-exempt employee, from approximately January 2002 to approximately June 2020, in the
15 State of California.

16 32. Defendants hired Plaintiffs, the other class members, and the other aggrieved
17 employees, classified them as hourly-paid or non-exempt employees, and failed to compensate
18 them for all hours worked and missed, late, short, and/or interrupted meal periods and/or rest
19 breaks.

20 33. Defendants had the authority to hire and terminate Plaintiffs, the other class
21 members, and the other aggrieved employees, to set work rules and conditions governing
22 Plaintiffs’, the other class members’ and the other aggrieved employees’ employment, and to
23 supervise their daily employment activities.

24 34. Defendants exercised sufficient authority over the terms and conditions of
25 Plaintiffs’, the other class members’ and the other aggrieved employees’ employment for them
26 to be joint employers of Plaintiffs, the other class members, and the other aggrieved
27 employees.

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35. Defendants directly hired and paid wages and benefits to Plaintiffs, the other class members, and the other aggrieved employees.

36. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

37. Plaintiffs, the other class members, and the other aggrieved employees worked over eight (8) hours in a day, forty (40) hours in a week, and/or over six (6) days in a workweek during their employment with Defendants.

38. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This pattern and practice involved, *inter alia*, failing to pay them for all regular and/or overtime wages earned and for missed, shortened, late, and/or interrupted meal periods and rest breaks in violation of California law.

39. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiff, the other class members, and the other aggrieved employees were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked.

40. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to use earned commissions, non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-discretionary production and/or performance pay, and/or shift differentials to calculate the regular rate of pay used to calculate the overtime rate for the payment of overtime wages where Plaintiffs, the other class members, and the other aggrieved employees earned commissions, non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-discretionary production and/or performance pay, and/or shift differentials and overtime wages in the same workweek.

41. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to provide Plaintiffs, the other class members, and the other aggrieved employees all required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable

1 penalties.

2 42. Plaintiffs are informed and believe, and based thereon allege, that Defendants
3 failed to relieve Plaintiff, the other class members, and the other aggrieved employees of all
4 duties, failed to relinquish control over Plaintiff, the other class members' and the other
5 aggrieved employees' activities, failed to permit Plaintiff, the other class members, and the
6 other aggrieved employees a reasonable opportunity to take, and impeded or discouraged them
7 from taking, thirty (30) minute uninterrupted meal breaks no later than the end of their fifth
8 hour of work for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute
9 uninterrupted meal breaks no later than their tenth hour of work for shifts lasting more than ten
10 (10) hours.

11 43. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 knew or should have known that Plaintiff, the other class members, and the other aggrieved
13 employees were entitled to receive all meal periods or payment of one additional hour of pay at
14 Plaintiff's, the other class members' and the other aggrieved employees' regular rate of pay
15 when a meal period was missed, shortened, late and/or interrupted and they did not receive all
16 meal periods or payment of one additional hour of pay at Plaintiff's, the other class members'
17 and the other aggrieved employees' regular rate of pay when a meal period was missed,
18 shortened, late, and/or interrupted.

19 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 failed to provide, authorize, and permit Plaintiff, the other class members, and the other
21 aggrieved employees to take full, uninterrupted, off-duty rest periods for every shift lasting
22 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for
23 every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
24 permit, and provide such rest breaks in the middle of each work period.

25 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants
26 knew or should have known that Plaintiff, the other class members, and the other aggrieved
27 employees were entitled to receive all rest periods or payment of one additional hour of pay at
28 Plaintiff's, the other class members' and the other aggrieved employees' regular rate of pay

1 when a rest period was missed, shortened late, and/or interrupted and they did not receive all
2 rest periods or payment of one additional hour of pay at Plaintiffs', the other class members'
3 and the other aggrieved employees' regular rate of pay when a rest period was missed,
4 shortened, late, and/or interrupted.

5 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that Plaintiffs, the other class members, and the other aggrieved
7 employees were entitled to receive at least minimum wages for compensation and that they
8 were not receiving at least minimum wages for all hours worked. Defendants' failure to pay
9 minimum wages included, inter alia, Defendants' effective payment of zero dollars per hour
10 for time Plaintiffs, the other class members, and the other aggrieved employees worked off the
11 clock performing work duties as alleged herein.

12 47. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs, the other class members, and the other aggrieved
14 employees were entitled to receive all wages owed to them upon discharge or resignation,
15 including overtime and minimum wages and meal and rest period premiums, and they did not,
16 in fact, receive all such wages owed to them at the time of their discharge or resignation. As
17 previously alleged these unpaid wages included but were not limited to unpaid overtime and
18 minimum wages for time worked before clocking-in, after clocking-out or performed during
19 meal breaks, as well as unpaid premium wages for missed, short, late or interrupted meal or
20 rest breaks.

21 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants
22 knew or should have known that Plaintiffs, the other class members, and the other aggrieved
23 employees were entitled to receive all wages owed to them during their employment.
24 Plaintiffs, the other class members, and the other aggrieved employees did not receive payment
25 of all wages, including overtime and minimum wages and meal and rest period premiums,
26 within any time permissible under California Labor Code section 204.

27 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants
28 knew or should have known that Plaintiffs, the other class members, and the other aggrieved

1 employees were entitled to receive complete and accurate wage statements in accordance with
2 California law, but, in fact, they did not receive complete and accurate wage statements from
3 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of
4 hours worked by Plaintiffs, the other class members, and the other aggrieved employees and
5 the accurate total amount of wages earned by Plaintiffs, the other class members, and the other
6 aggrieved employees as alleged herein. This injured Plaintiffs, the other class members, and
7 the other aggrieved employees by depriving them of records reflecting the actual wages they
8 were owed.

9 50. Plaintiffs are informed and believe, and based thereon allege, that Defendants
10 knew or should have known that Defendants had to keep complete and accurate payroll records
11 for Plaintiff, the other class members, and the other aggrieved employees in accordance with
12 California law, but, in fact, did not keep complete and accurate payroll records. Defendants'
13 failure included, *inter alia*, the failure to keep accurate records of the hours worked by
14 Plaintiffs, the other class members, and the other aggrieved employees.

15 51. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 knew or should have known that Plaintiffs, the other class members, and the other aggrieved
17 employees were entitled to reimbursement for necessary business-related expenses.

18 52. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 knew or should have known that they had a duty to compensate Plaintiffs, the other class
20 members, and the other aggrieved employees pursuant to California law, and that Defendants
21 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
22 failed to do so, and falsely represented to Plaintiffs, the other class members, and the other
23 aggrieved employees that they were properly denied wages, all in order to increase
24 Defendants' profits.

25 53. During the relevant time period, Defendants failed to pay overtime wages to
26 Plaintiffs, the other class members, and the other aggrieved employees for all overtime hours
27 worked. Plaintiffs, the other class members, and the other aggrieved employees were required
28 to work more than eight (8) hours per day, forty (40) hours per week, and/or six (6)

1 consecutive days in a workweek without overtime compensation for all overtime hours
2 worked.

3 54. During the relevant time period, Defendants failed to use earned commissions,
4 non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-
5 discretionary production and/or performance pay, and/or shift differentials to calculate the
6 regular rate of pay used to calculate the overtime rate for the payment of overtime wages where
7 Plaintiffs, the other class members, and the other aggrieved employees earned commissions,
8 non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-
9 discretionary production and/or performance pay, and/or shift differentials and overtime wages
10 in the same workweek.

11 55. During the relevant time period, Defendants failed to provide all requisite
12 uninterrupted meal and rest periods to Plaintiff, the other class members, and the other
13 aggrieved employees.

14 56. During the relevant time period, Defendants failed to pay Plaintiffs, the other
15 class members, and the other aggrieved employees at least minimum wages for all hours
16 worked.

17 57. During the relevant time period, Defendants failed to pay Plaintiffs, the other
18 class members, and the other aggrieved employees all wages owed to them upon discharge or
19 resignation.

20 58. During the relevant time period, Defendants failed to pay Plaintiffs, the other
21 class members, and the other aggrieved employees all wages within any time permissible under
22 California law, including, *inter alia*, California Labor Code section 204.

23 59. During the relevant time period, Defendants failed to provide complete or
24 accurate wage statements to Plaintiffs, the other class members, and the other aggrieved
25 employees.

26 60. During the relevant time period, Defendants failed to keep complete or accurate
27 payroll records for Plaintiffs, the other class members, and the other aggrieved employees.

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61. During the relevant time period, Defendants failed to reimburse Plaintiffs, the other class members, and the other aggrieved employees for all necessary business-related expenses and costs.

62. During the relevant time period, Defendants failed to properly compensate Plaintiffs, the other class members, and the other aggrieved employees pursuant to California law in order to increase Defendants' profits.

63. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

64. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 63, and each and every part thereof with the same force and effect as though fully set forth herein.

65. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

66. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and the other class members employed by Defendants, and working more than eight (8) hours in a day, more than forty (40) hours in a week, and/or more than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day, more than forty (40) hours in a week, or for the first eight (8) hours worked on the seventh day of work in a workweek.

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1 67. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiffs and the other class members overtime compensation at a rate of two
3 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

4 68. California Labor Code section 510 codifies the right to overtime compensation
5 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
6 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
7 of work, and to overtime compensation at twice the regular hourly rate for hours worked in
8 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
9 of work.

10 69. During the relevant time period, Plaintiffs and the other class members worked
11 in excess of eight (8) hours in a day, forty (40) hours in a week, and/or six (6) consecutive days
12 in a workweek.

13 70. During the relevant time period, Defendants intentionally and willfully failed to
14 pay overtime wages owed to Plaintiffs and the other class members. Plaintiffs and the other
15 class members did not receive overtime compensation at one and one-half times their regular
16 hourly rate of pay for all hours spent performing job duties in excess of eight (8) hours in a
17 day, or forty (40) hours in a week, or for the first eight (8) hours worked on the seventh day of
18 work.

19 71. Defendants' failure to pay Plaintiffs and the other class members the unpaid
20 balance of overtime compensation, as required by California laws, violates the provisions of
21 California Labor Code sections 510 and 1198, and is therefore unlawful.

22 72. Pursuant to California Labor Code section 1194, Plaintiffs and the other class
23 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
24 attorneys' fees.

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SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

73. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 72, and each and every part thereof with the same force and effect as though fully set forth herein.

74. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and the other class members' employment by Defendants.

75. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

76. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

77. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, 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.

78. During the relevant time period, Plaintiffs and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not

1 waive their legally-mandated meal periods by mutual consent, were required to work for
2 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
3 (30) minutes and/or rest period.

4 79. During the relevant time period, Plaintiffs and the other class members who
5 were scheduled to work for a period of time in excess of six (6) hours were required to work
6 for periods longer than five (5) hours without an uninterrupted meal period of not less than
7 thirty (30) minutes and/or rest period.

8 80. During the relevant time period Plaintiffs and the other class members' meal
9 periods were missed, shortened, taken late, and/or were interrupted because Defendant required
10 them to perform work duties including but not limited to receiving work instruction and
11 answering work related questions from supervisors and managers.

12 81. As a result, Defendant failed to relieve Plaintiffs and the other class members of
13 all duties, failed to relinquish control over Plaintiffs and the other class members' activities,
14 failed to permit Plaintiffs and the other class members a reasonable opportunity to take, and
15 impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no
16 later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to
17 take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work
18 for shifts lasting more than ten (10) hours.

19 82. During the relevant time period, Defendants intentionally and willfully required
20 Plaintiffs and the other class members to work during meal periods and failed to compensate
21 Plaintiffs and the other class members the full meal period premium for work performed during
22 meal periods.

23 83. During the relevant time period, Defendants failed to pay Plaintiffs and the other
24 class members the full meal period premium due pursuant to California Labor Code section
25 226.7.

26 84. Defendants' conduct violates applicable IWC Wage Order and California Labor
27 Code sections 226.7 and 512(a).

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85. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

86. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 85, and each and every part thereof with the same force and effect as though fully set forth herein.

87. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

88. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

89. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

90. During the relevant time period, Defendants required Plaintiffs and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

91. During the relevant time period, Defendants willfully required Plaintiffs and the other class members to remain on premises during rest periods and/or to work during rest

1 periods and failed to pay Plaintiffs and the other class members the full rest period premium
2 for work performed during rest periods.

3 92. As a result, Defendant failed to provide, authorize, and/or permit Plaintiffs and
4 other class members to take full, uninterrupted, off-duty rest periods for every shift lasting three
5 and one-half (3½) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every
6 shift lasting six (6) to ten (10) hours, and/or three full, uninterrupted, off-duty rest periods for
7 every shift lasting ten (10) to fourteen (14) hours and failed to make a good faith effort to
8 authorize, permit, and provide such rest breaks in the middle of each work period.

9 93. During the relevant time period, Defendants failed to pay Plaintiffs and the other
10 class members the full rest period premium due pursuant to California Labor Code section
11 226.7

12 94. Defendants' conduct violates applicable IWC Wage Orders and California
13 Labor Code section 226.7.

14 95. Pursuant to the applicable IWC Wage Orders and California Labor Code section
15 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one
16 additional hour of pay at the employees' regular hourly rate of compensation for each work
17 day that the rest period was not provided.

18 **FOURTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

20 **(Against CIGNA HEALTH & LIFE INSURANCE COMPANY**

21 **and DOES 1 through 100)**

22 96. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
23 through 95, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 97. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
26 provide that the minimum wage to be paid to employees, and the payment of a lesser wage
27 than the minimum so fixed is unlawful.

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98. During the relevant time period, Defendants failed to pay all required wages to Plaintiffs and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1. Defendants' failure to pay wages included, *inter alia*, Defendants' effective payment of zero dollars per hour for time Plaintiffs and the other class members worked off the clock performing work duties.

99. Defendants' failure to pay Plaintiffs and the other class members the minimum, regular, and overtime wages as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiffs and the other class members are entitled to recover the unpaid balance of their wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

100. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

101. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

102. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 101, and each and every part thereof with the same force and effect as though fully set forth herein.

103. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her

1 employment, his or her wages shall become due and payable not later than seventy-two (72)
2 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
3 intention to quit, in which case the employee is entitled to his or her wages at the time of
4 quitting.

5 104. During the relevant time period, Defendants intentionally and willfully failed to
6 pay Plaintiffs and the other class members who are no longer employed by Defendants their
7 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

8 105. Plaintiffs were not paid at the time of their discharge wages earned and unpaid
9 throughout his employment, including but not limited to, minimum wages and overtime wages
10 for time worked off-the-clock and meal and rest period premium payments.

11 106. Defendants' failure to pay Plaintiffs and the other class members who are no
12 longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72)
13 hours of their leaving Defendants' employ, is in violation of California Labor Code sections
14 201 and 202.

15 107. California Labor Code section 203 provides that if an employer willfully fails to
16 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
17 shall continue as a penalty from the due date thereof at the same rate until paid or until an
18 action is commenced; but the wages shall not continue for more than thirty (30) days.

19 108. Plaintiffs and the other class members are entitled to recover from Defendants
20 the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
21 pursuant to California Labor Code section 203.

22 **SIXTH CAUSE OF ACTION**

23 **(Violation of California Labor Code § 204)**

24 **(Against CIGNA HEALTH & LIFE INSURANCE COMPANY**

25 **and DOES 1 through 100)**

26 109. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
27 through 108, and each and every part thereof with the same force and effect as though fully set
28 forth herein.

110. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 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.

111. At all times herein set forth, California Labor Code section 204 provides 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.

112. At all times herein set forth, California Labor Code section 204 provides 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.

113. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiffs and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

114. Plaintiffs and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

115. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 114, and each and every part thereof with the same force and effect as though fully set forth herein.

116. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid

1 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
2 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
3 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
4 his or her social security number, (8) the name and address of the legal entity that is the
5 employer, and (9) all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee. The deductions
7 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
8 showing the month, day, and year, and a copy of the statement or a record of the deductions
9 shall be kept on file by the employer for at least three years at the place of employment or at a
10 central location within the State of California.

11 117. Defendants have intentionally and willfully failed to provide Plaintiffs and the
12 other class members with complete and accurate wage statements. The deficiencies include,
13 but are not limited to: the failure to include the total number of hours worked by Plaintiffs and
14 the other class members.

15 118. As a result of Defendants' violation of California Labor Code section 226(a),
16 Plaintiffs and the other class members have suffered injury and damage to their statutorily-
17 protected rights. Because Plaintiffs and the putative class members' wage statements did not
18 reflect the accurate total number of regular and hours worked, Plaintiffs and the putative class
19 members were unable to determine the total amount of hours they worked, were unable to
20 determine the total amount of compensation they were owed, and were unable to verify they
21 were paid the proper amount. In order to determine how much Plaintiffs and the putative class
22 members should have been paid, Plaintiffs and the putative class members would have had to
23 engage in discovery and mathematical computations in order to reconstruct the missing
24 information.

25 119. More specifically, Plaintiffs and the other class members have been injured by
26 Defendants' intentional and willful violation of California Labor Code section 226(a) because
27 they were denied both their legal right to receive, and their protected interest in receiving,
28 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

1 120. California Labor Code section 226(e) provides that an employee suffering injury
2 as a result of a knowing and intentional failure by an employer to comply with California
3 Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty
4 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
5 (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate
6 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
7 attorney's fees.

8 121. California Code of Civil Procedure section 338(a) provides a three year statute
9 of limitations for an action upon a liability created by statute. Therefore, pursuant to
10 California Labor Code section 226(e) Plaintiffs are entitled to seek their actual damages caused
11 by Defendants' failure to comply with California Labor Code section 226(a). Plaintiffs' claim
12 for damages is timely because it is brought within the three year statute of limitations.

13 122. The other class members who were employed by Defendants during the
14 applicable statute of limitations period for Labor Code section 226(e) penalties are entitled to
15 recover from Defendants the greater of their actual damages caused by Defendants' failure to
16 comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four
17 thousand dollars per employee.

18 123. Plaintiffs and the other class members are entitled to recover from Defendants
19 the greater of their actual damages caused by Defendants' failure to comply with California
20 Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
21 employee.

22 124. Plaintiffs and the other class members are also entitled to injunctive relief to
23 ensure compliance with this section, pursuant to California Labor Code section 226(h).

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EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

125. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 124, and each and every part thereof with the same force and effect as though fully set forth herein.

126. Pursuant to California Labor Code section 1174(d), an employer shall keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

127. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other class members.

128. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiffs and the other class members have suffered injury and damage to their statutorily-protected rights.

129. More specifically, Plaintiffs and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

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NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

130. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 129, and each and every part thereof with the same force and effect as though fully set forth herein.

131. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

132. Plaintiffs and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants.

133. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the other class members for all necessary business-related expenses and costs.

134. Plaintiffs and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

135. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 134, and each and every part thereof with the same force and effect as though fully set forth herein.

136. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'

competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

137. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

138. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiffs and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiffs and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to provide a day of rest violate California Labor Code sections 551 and 552. Defendants' policies and practices of failing to pay minimum, regular, and overtime wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiffs and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

139. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

140. Plaintiffs and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

141. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiffs and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences August 19, 2016; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, et seq.)

(Against CIGNA HEALTH & LIFE INSURANCE COMPANY

and DOES 1 through 100)

142. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 141, and each and every part thereof with the same force and effect as though fully set forth herein.

143. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

144. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

145. Plaintiffs and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

146. Defendants’ failure to pay legally required overtime wages to Plaintiffs and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

147. Defendants’ failure to provide legally required meal periods to Plaintiffs and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

148. Defendants' failure to provide legally required rest periods to Plaintiffs and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

149. Defendants' failure to pay legally required minimum wages to Plaintiffs and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

Failure to Timely Pay Wages Upon Termination

150. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

151. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Complete and Accurate Wage Statements

152. Defendants' failure to provide complete and accurate wage statements to Plaintiffs and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete and Accurate Payroll Records

153. Defendants' failure to keep complete and accurate payroll records relating to Plaintiffs and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business-Related Expenses and Costs

154. Defendants' failure to reimburse Plaintiffs and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code

sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

155. Pursuant to California Labor Code section 2699, Plaintiffs, individually, and on behalf of all aggrieved employees, request and are entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010 et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

156. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

157. Further, Plaintiffs are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiffs, individually, on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to PAGA, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to PAGA, pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action as to the first ten causes of action;
2. That Plaintiffs be appointed as the representative of the Class as to the first ten causes of action;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

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8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class members;

11. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and the other class members;

18. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiffs and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiffs and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiffs and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiffs and the other class members who have left Defendants' employ;

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33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiffs and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

38. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

43. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiffs and the other class members as required by California Labor Code section 1174(d);

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- 1 45. For actual, consequential and incidental losses and damages, according to proof;
- 2 46. For statutory penalties pursuant to California Labor Code section 1174.5; and
- 3 47. For such other and further relief as the Court may deem just and proper.

4 **As to the Ninth Cause of Action**

5 48. That the Court declare, adjudge and decree that Defendants violated California

6 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other

7 class members for all necessary business-related expenses as required by California Labor

8 Code sections 2800 and 2802;

- 9 49. For actual, consequential and incidental losses and damages, according to proof;
- 10 50. For the imposition of civil penalties and/or statutory penalties;
- 11 51. For reasonable attorneys' fees and costs of suit incurred herein; and
- 12 52. For such other and further relief as the Court may deem just and proper.

13 **As to the Tenth Cause of Action**

14 53. That the Court decree, adjudge and decree that Defendants violated California

15 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs and the

16 other class members all overtime compensation due to them, failing to provide all meal and

17 rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to

18 Plaintiffs and the other class members, failing to pay Plaintiffs' and the other class members'

19 wages timely as required by California Labor Code section 201, 202 and 204 and by violating

20 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

21 54. For restitution of unpaid wages to Plaintiffs and all the other class members and

22 all pre-judgment interest from the day such amounts were due and payable;

23 55. For the appointment of a receiver to receive, manage and distribute any and all

24 funds disgorged from Defendants and determined to have been wrongfully acquired by

25 Defendants as a result of violation of California Business and Professions Code sections

26 17200, et seq.;

27 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

28 California Code of Civil Procedure section 1021.5;

57. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

58. For such other and further relief as the Court may deem just and proper.

As to the Eleventh Cause of Action

59. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and (g), costs/expenses, and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204 *et seq.*, 226(a), 226.7, 351, 510, 512, 512(a), 558(a)(1)(2), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s); and

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

Dated: October 5, 2022

LAWYERS for JUSTICE, PC

By: 
Edwin Aiwanian
Attorneys for Plaintiff Jonathan Santiago

Dated: October 5, 2022

**BLUMENTHAL, NORDREHAUG,
BHOWMIK DE BLOUW LLP**

By: _____
Andrew G. Ronan
Attorneys for Plaintiff Adrian Avila

57. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

58. For such other and further relief as the Court may deem just and proper.

As to the Eleventh Cause of Action

59. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and (g), costs/expenses, and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204 *et seq.*, 226(a), 226.7, 351, 510, 512, 512(a), 558(a)(1)(2), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s); and

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

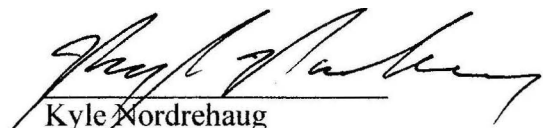
Dated: October 5, 2022

LAWYERS for JUSTICE, PC

By: _____
Edwin Aiwazian
Attorneys for Plaintiff Jonathan Santiago

Dated: October 5, 2022

**BLUMENTHAL, NORDREHAUG,
BHOWMIK DE BLOUW LLP**

By: 
Kyle Nordrehaug
Attorneys for Plaintiff Adrian Avila

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

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Attorneys for Plaintiff Adrian Avila

The above-referenced document was transmitted to the person(s) at the e-mail addresses listed herein at their most recent known e-mail address or e-mail of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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1 State of California, Labor & Workforce Development Agency

2 Web URL:

3 <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

4 **[X] BY ONLINE SUBMISSION**

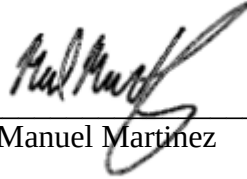
5 The foregoing documents were transmitted to the California Labor and Workforce
6 Development Agency through the online system established for the submission of notices
7 and documents, in conformity with California Labor Code section 2699(l). I did not
8 receive, within a reasonable time after the transmission, any electronic message or other
9 indication that the transmission was unsuccessful.

10 **[X] STATE**

11 I declare under penalty of perjury under the laws of the State of California that the above
12 is true and correct.

13 Executed on October 6, 2022, at Glendale, California.

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Manuel Martinez