

MICHAEL R. CROSNER (SBN 41294)  
[mike@crosnerlegal.com](mailto:mike@crosnerlegal.com)  
ZACHARY M. CROSNER (SBN 272295)  
[zach@crosnerlegal.com](mailto:zach@crosnerlegal.com)  
BLAKE R. JONES (SBN 211221)  
[blake@crosnerlegal.com](mailto:blake@crosnerlegal.com)  
NIKKI TRENNER (SBN 316007)  
[nikki@crosnerlegal.com](mailto:nikki@crosnerlegal.com)  
**CROSNER LEGAL, PC**  
9440 Santa Monica Blvd. Suite 301  
Beverly Hills, CA 90210  
Tel: (310) 496-5818  
Fax: (310) 510-6429

Attorneys for Plaintiff JENNIFER COMBEST,  
as an individual and on behalf of all others similarly  
situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

JENNIFER COMBEST, as an individual  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

NINETY FIVE SOUTH, INC., a Florida  
corporation; and DOES 1-50, inclusive

Defendants.

Case No.: 21STCV02842

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Pay All Wages Due and Owing Upon Separation of Employment**
7. **Failure to Provide Paid Sick Time**
8. **Failure to Maintain Accurate Records**
9. **Unfair Competition and**
10. **Violation of Private Attorneys General Act (PAGA)**

**DEMAND FOR JURY TRIAL**

1 Plaintiff, JENNIFER COMBEST (“Plaintiff”), as an individual on behalf of herself, the State  
2 of California, Aggrieved Employees (defined below) and on behalf of all other similarly situated  
3 Class Members (defined below), hereby files this Complaint against Defendants NINETY FIVE  
4 SOUTH, INC., and DOES 1-50, inclusive (“Defendants”). Plaintiff is informed and believes and  
5 thereon alleges as follows:

#### 6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is  
8 proper in Los Angeles County, California, because Defendants transact business within this judicial  
9 district and some of the complained of conduct occurred in this judicial district. *See also Crestwood*  
10 *Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is  
11 proper in any county where the defendants committed Labor Code violations against some of its  
12 employees).

#### 13 **THE PARTIES**

14 2. Plaintiff resides in the County of Los Angeles. Plaintiff worked for Defendants in  
15 the State of California as a non-exempt, hourly-paid, porter, during the relevant time period.

16 3. Defendant NINETY FIVE SOUTH, INC. ("NINETY FIVE SOUTH") is a Florida  
17 corporation that, at all relevant times, was authorized to do business within the State of California  
18 and is doing business in the State of California.

19 4. The true names and capacities of the DOE Defendants sued herein as DOES 1  
20 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue each such Defendants  
21 by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible  
22 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to  
23 reflect the true names and capacities of the Doe Defendants when such identities become known.

24 5. Plaintiff is further informed and believes that, at all relevant times, each Defendant  
25 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling  
26 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in  
27 interest of some or all of the other Defendants, and was engaged with some or all of the other  
28 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the

other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each Defendants acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendants knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

6. Whenever and wherever reference is made in this complaint to any act or failure to act by a Defendants or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each Defendants acting individually, jointly and severally.

## CLASS ALLEGATIONS

7. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The class Plaintiff seeks to represent is defined as follows: “all non-exempt workers who were employed by Defendants in California at any time within the four years prior to the filing of the initial complaint.” (the “Class Members”)

a. Numerosity: While the exact number of Class Members is unknown to Plaintiff at this time, the class is so numerous that the individual joinder of all members is impractical under the circumstances of this case.

b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether Defendants provided Plaintiff and the Class Members with all meal periods or proper premium payments in lieu thereof in compliance with California law; (2) whether Defendants provided Plaintiff and the Class Members with all rest periods, or premium payments in lieu thereof, in compliance with California law; (3) whether Defendants failed to pay Plaintiff and the Class Members all owed minimum wages; (4) whether Defendants failed to pay Plaintiff and the Class Members all owed overtime wages; (5) whether Defendants failed to pay Plaintiff and the Class Members all sick leave time benefits in compliance with California law; (6) whether Defendants failed to maintain records showing true start and stop times of shifts as well as true start and stop times of all meal periods taken; (7)

1 whether Defendants provided Plaintiff and the Class Members with accurate, itemized  
2 wage statements in compliance with California law; (8) whether Defendants timely paid  
3 Plaintiff and the Class Members all wages due and owing upon separation of  
4 employment; and (9) whether Defendants violated California Business and Professions  
5 Code sections 17200, et seq.

6 c. Ascertainable Class. The proposed class is ascertainable as its members can be identified  
7 and located using information in Defendant's business, payroll and personnel records.

8 d. Numerosity. The plaintiff class is so numerous that the individual joinder of all members  
9 is impractical under the circumstances of this case. While the exact number of Class  
10 Members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of  
11 at least 100 individuals.

12 e. Typicality. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff  
13 suffered a similar injury as the other Class Members as a result of Defendant's common  
14 practices regarding, inter alia, failure to pay all owed minimum and overtime wages,  
15 failure to provide proper meal and rest periods or premium compensation in lieu thereof,  
16 failure to provide all paid sick leave time, failure to provide accurate wage statements,  
17 failure to maintain adequate records, and failure to pay all wages due upon termination.  
18 In addition, Plaintiff will fairly and adequately protect the interests of the Class  
19 Members. Plaintiff has no interests adverse to the interests of the other Class Members.

20 f. Superiority. A class action is superior to other available means for the fair and efficient  
21 adjudication of this controversy since individual joinder of all members of the class is  
22 impractical. Class action treatment will permit a large number of similarly situated  
23 persons to prosecute their common claims in a single forum simultaneously, efficiently,  
24 and without the unnecessary duplication of effort and expense that numerous individual  
25 actions would engender. Furthermore, as the damages suffered by each individual  
26 member of the class may be relatively small, the expenses and burden of individual  
27 litigation would make it difficult or impossible for individual members of the class to  
28 redress the wrongs done to them, while an important public interest will be served by

1 addressing the matter as a class action. The cost to the court system of adjudication of  
2 such individualized litigation would be substantial. Individualized litigation would also  
3 present the potential for inconsistent or contradictory judgments. Finally, the alternative  
4 of filing a claim with the California Labor Commissioner is not superior, given the lack  
5 of discovery in such proceedings, the fact that there are fewer available remedies, and  
6 the losing party has the right to a trial de novo in the Superior Court.

### 7 **FACTUAL ALLEGATIONS**

8 8. During the four-year period preceding filing of this complaint, Plaintiff, and each of  
9 the Class Members and each of the Aggrieved Employees (defined below) was employed by  
10 Defendants in the State of California as non-exempt, hourly-paid workers. At all times referenced  
11 herein, Defendants exercised control over Plaintiff, Aggrieved Employees and each of the Class  
12 Members and suffered and/or permitted them to work.

13 9. Plaintiff was employed by Defendants as a non-exempt, hourly-paid, porter  
14 beginning in or about 2017.

15 10. Plaintiff typically worked eight (8) hours per day four (4) days per week and 8.5  
16 hours per day one (1) day per week.

17 11. Plaintiff was regularly required to perform off-the-clock work by virtue of  
18 Defendants' auto-deduction policy for meal periods not provided and time-shaving/time-rounding  
19 policy. Upon information and belief, Defendants used a time-rounding system that as applied  
20 worked to detrimentally shave and round time off from Plaintiff's workdays. Plaintiff alleges on  
21 information and belief that through the operation of Defendants' time-rounding system Plaintiff  
22 would systematically be deprived of compensable time because the time-recording system  
23 implemented by Defendants would almost always, if not always, understate actual compensable  
24 work time due to the rounding. Based upon information and belief, Defendants had actual or  
25 constructive knowledge that its rounding policy resulted in underpaying Plaintiff the wages she was  
26 owed. This time-shaving system, implemented by and through Defendants' unlawful rounding  
27 policies and procedures, resulted in not only recordkeeping violations but also violations of  
28 California's minimum and overtime wage laws.

1           12. Defendants further violated California overtime laws by simply failing to pay any  
2 premium wage rate for time counted by Defendants as time worked beyond eight (8) hours in a  
3 day/beyond forty hours in a week. Plaintiff reports that management simply informed her “we don’t  
4 pay overtime,” or words to that effect.

5           13. Plaintiff was unable to take timely, thirty-minute uninterrupted meal periods, often  
6 being forced to take late meal periods and/or work through her meal periods or any purported meal  
7 periods would be interrupted/cut short due to the nature and constraints of her job duties and or  
8 commentary from supervisors pressuring her to take non-compliant breaks or skip breaks  
9 completely. Notably, during her weekly 8.5-hour shift Plaintiff was not afforded any meal period  
10 whatsoever. Nevertheless, Defendants implemented a policy and practice of automatically  
11 deducting thirty minutes to an hour per shift for missed/improper meal periods, despite having actual  
12 and/or constructive knowledge that Plaintiff did not receive timely, compliant, uninterrupted meal  
13 periods. This auto-deduction policy and practice resulted in the underpayment of minimum wages  
14 and overtime pay. Defendants also failed to pay Plaintiff an additional hour of wages at her regular  
15 rate of pay for each workday a proper meal period was not provided.

16           14. Plaintiff did not receive compliant, timely 10 (ten)- minute rest periods for every four  
17 (4) hours worked or major fraction thereof. There was no policy/practice in place to ensure Plaintiff  
18 could take timely rest periods; rather, any purported rest periods were taken as time permitted and  
19 were improper irrespective of the fact that they were rarely timely, *to wit*: Based on information and  
20 belief, Plaintiff was required to at all times stay on the work premises and remain tethered to her  
21 cell phone/other communication device for work purposes and thus remained under employer  
22 control at all times, rendering any rest periods on duty and thereby improper. Plaintiff was not paid  
23 rest period premiums for these missed/improper rest periods.

24           15. Based on information and belief, Defendants did not provide Plaintiff with any sick  
25 leave pay or Defendants improperly accrued the amount of sick leave pay owed for failure to base  
26 the owed sick leave pay on the correct number of hours worked. Furthermore, Defendants failed to  
27 provide notice of the correct sick leave amount balance available to Plaintiff.

28           16. Defendants failed to furnish Plaintiff with complete and accurate wage statements in

1 compliance with Labor Code section 226. Among other things, Plaintiff's wage statements did not  
2 accurately reflect, the total gross and net wages earned, including, all earned minimum and overtime  
3 wages and did not accurately reflect all applicable hourly rates in effect during the pay period and  
4 the corresponding number of hours worked at each hourly rate.

5 17. Upon separation of employment, Defendants failed to furnish Plaintiff with her final  
6 paycheck containing all earned and owed wages. Plaintiff's final pay check did not include all  
7 remuneration owed to Plaintiff as it was devoid of all owed minimum and overtime wages and all  
8 meal and rest period premiums owed.

9 18. While acting on the direct instruction of Defendants and discharging her duties,  
10 Plaintiff incurred work-related expenses. Defendants failed to reimburse Plaintiff for these  
11 expenses.

12 19. Plaintiff is informed and believes and allege thereon that Defendants engaged in  
13 these same herein described unlawful practices with regard to all of the Aggrieved Employees  
14 (defined below) and Class Members, and that Defendants applied these same herein described  
15 unlawful practices to all of its employees that it applied to Plaintiff.

### 16 **FIRST CAUSE OF ACTION**

#### 17 **Recovery of Unpaid Minimum Wages and Liquidated Damages** 18 **(Against All Defendants)**

19 20. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged  
20 herein.

21 21. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage  
22 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up  
23 to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.  
24 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll  
period is unlawful.

25 22. Defendants violated California's minimum wage laws by failing to compensate  
26 Plaintiff and the Class Members for all hours worked by virtue of among other things, Defendants'  
27 auto-deduction policy for meal periods not provided and Defendants' time-shaving/time-rounding  
28 policy, *to wit*: Based on information and belief, Defendants used a time-rounding system that as

applied worked to detrimentally shave and round time off from Plaintiff's and the Class Members' workdays. Plaintiff alleges on information and belief that through the operation of Defendants' time-rounding system, Plaintiff and the Class Members would systematically be deprived of compensable time because the time-recording system implemented by Defendants would almost always, if not always, understate actual compensable work time due to the rounding. Upon information and belief, Defendants had actual or constructive knowledge that its rounding policy resulted in underpaying Plaintiff and the Class Members the wages they were owed. This time-shaving system, implemented by and through Defendants' unlawful rounding policies and procedures, resulted in not only recordkeeping violations but also violations of California's minimum and overtime wage laws. Moreover, Plaintiff and the Class Members were unable to take timely, thirty-minute uninterrupted meal periods, often being forced to take late meal periods and/or work through their meal periods or any purported taken meal periods would be interrupted/cut short due to the nature and constraints of her job duties and commentary from supervisors pressuring them to take non-compliant breaks or skip breaks completely. Defendants implemented a policy and practice of automatically deducting thirty minutes to an hour per shift for purported meal periods, despite having actual and/or constructive knowledge that Plaintiff and the Class Members did not receive timely, compliant, uninterrupted meal periods, resulting in underpayment of minimum wages and overtime pay.

23. Defendants knew or should have known that Plaintiff and the Class Members worked hours for which they were not properly compensated.

24. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Class Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus attorney's fees and costs, in an amount to be proved at trial.

## **SECOND CAUSE OF ACTION**

### **Recovery of Unpaid Overtime (Against All Defendants)**

25. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

26. California law provides employees in California must be paid overtime, equal to 1.5

1 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or (8) eight  
2 per day and must be paid double wages for all hours worked in excess of 12 per day, unless they are  
3 exempt. Plaintiff and the Class Members worked overtime hours for which they were not  
4 compensated by Defendants by virtue of Defendants' time rounding/time shaving and auto-  
5 deduction practices and an illegal policy and practice blatantly articulated by management of simply  
6 refusing to pay overtime, as described *supra*.

7 27. Defendant's conduct described above is in violation of California Labor Code  
8 sections 510 and 1194, and all applicable IWC Wage Orders. Plaintiff and the Class Members are  
9 entitled to recover all unpaid overtime wages, plus attorney's fees and costs, in an amount to be  
10 proved at trial.

11 **THIRD CAUSE OF ACTION**  
12 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**  
13 **(Against All Defendants)**

14 28. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

15 29. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,  
16 Defendants were required to provide Plaintiff and the Class Members with one 30-minute meal  
17 break free from all duties for all shifts longer than 5 hours, and a second 30-minute meal break free  
18 from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the  
19 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but  
20 no more than six (6) hours, the required meal period may be waived by mutual consent of the  
21 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours  
22 but no more than twelve (12) hours, the required second meal period may be waived by mutual  
23 consent of the employer and employee, but only if the first meal period was not waived. Employers  
24 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one  
25 meal period for shifts over five hours (see above), and (2) to record having done so. If the employer  
26 fails to properly record a valid meal period, it is presumed no meal period was provided.

27 30. Plaintiff and the Class Members were unable to take timely, thirty-minute  
28 uninterrupted meal periods, often being forced to take late meal periods and/or work through their

1 meal periods or any purported meal periods would be interrupted/cut short due to the nature and  
2 constraints of their job duties and or commentary from supervisors pressuring them to take non-  
3 compliant meal periods or skip meal periods completely. Notably, Plaintiff reports that during her  
4 weekly 8.5 hour-shift she was not afforded any meal period whatsoever. Nevertheless, Defendants  
5 implemented a policy and practice of automatically deducting thirty minutes to an hour per shift for  
6 purported meal periods, despite having actual and/or constructive knowledge that Plaintiff and the  
7 Class Members did not receive timely, compliant, uninterrupted meal period. Defendants also failed  
8 to pay Plaintiff an additional hour of wages at her regular rate of pay for each workday a proper  
9 meal period was not provided.

10 31. Defendants failed to provide Plaintiff and the Class Members with all required meal  
11 periods, or with proper compensation in lieu thereof. As a result, under Labor Code section 226.7,  
12 Plaintiff and the Class Members are entitled to one additional hour's pay at the proper premium pay  
13 rate for each day a meal period was missed, late or interrupted, all in an amount to be proved at trial.

14 **FOURTH CAUSE OF ACTION**  
15 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**  
16 **(Against All Defendants)**

17 32. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

18 33. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer  
19 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours  
20 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period  
21 "insofar as practicable." The rest period requirement obligates employers to permit and authorize  
22 employees to take off-duty rest periods, meaning employers must relieve employees of all duties  
23 and relinquish control over how employees spend their time. *Augustus v. ABM Security Services,*  
24 *Inc.*, (2016) 5 Cal.5th 257. Accordingly, an employer cannot require employees to stay on the work  
25 premises nor may an employer require employees to monitor their cell phones and/or radios and/or  
26 other dispatch equipment during their rest periods as "one cannot square the practice of compelling  
27 employees to remain at the ready, tethered by time and policy to particular locations or  
28 communications devices, with the requirement to relieve employees of all work duties and employer

1 control during 10-minute rest periods. [emphasis added].” Id. at 269. If the employer fails to  
2 provide any required rest period, the employer must pay the employee one hour of pay at the  
3 employee’s regular rate of compensation for each workday the employer did not provide at least one  
4 legally required rest period, pursuant to Labor Code section 226.7.

5 34. Plaintiff and the Class Members did not receive compliant, timely 10 (ten)-minute  
6 rest periods every four (4) hours or major fraction thereof. There was no policy/practice  
7 implemented to ensure Plaintiff and the Class Members were able to take timely rest periods; rather,  
8 any purported rest periods were taken as time permitted and were improper irrespective of the fact  
9 that they were rarely timely, *to wit*: Based on information and belief, Plaintiff and the Class  
10 Members were required to at all times stay on the work premises and remain tethered to their cell  
11 phone/other communication devices for work purposes thus always remaining under employer  
12 control and rendering any said rest periods on-duty and thereby improper. Defendants further  
13 employed policies and procedures which ensured Plaintiff and the Class Members did not receive  
14 any premium wages to compensate them for workdays that they did not receive all legally required  
15 rest periods.

16 35. Defendants are therefore liable to Plaintiff and the Class Members for one hour of  
17 additional pay at the regular rate of compensation for each workday that a require rest periods was  
18 not provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order, plus  
19 pre-judgment interest.

20 **FIFTH CAUSE OF ACTION**  
21 **Failure to Furnish Accurate Itemized Wage Statements**  
22 **(Against All Defendants)**

23 36. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

24 37. Pursuant to California Labor Code § 226, subdivision (a), Plaintiff and the Class  
25 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized  
26 wage statement accurately stating the following:

27 (1) gross wages earned, (2) total hours worked by the employee,  
28 except for any employee whose compensation is solely based on a  
salary and who is exempt from payment of overtime under  
subdivision (a) of Section 515 or any applicable order of the Industrial

1 Welfare Commission, (3) the number of piece-rate units earned and  
2 any applicable piece rate if the employee is paid on a piece-rate basis,  
3 (4) all deductions, provided that all deductions made on written orders  
4 of the employee may be aggregated and shown as one item, (5) net  
5 wages earned, (6) the inclusive dates of the period for which the  
6 employee is paid, (7) the name of the employee and his or her social  
7 security number, except that by January 1, 2008, only the last four  
8 digits of his or her social security number or an employee  
9 identification number other than a social security number may be  
10 shown on the itemized statement, (8) the name and address of the  
11 legal entity that is the employer, and (9) all applicable hourly rates in  
12 effect during the pay period and the corresponding number of hours  
13 worked at each hourly rate by the employee.

14 38. During the Class Period, Defendants intentionally failed to provide Plaintiff and the  
15 Class Members with accurate wage statements in compliance with Labor Code § 226, by including,  
16 but not limited to, failing to identify or include on the wage statement, total gross and net wages  
17 earned, the total hours worked, and all applicable hourly rates in effect during the pay period and  
18 the corresponding number of hours worked at each hourly rate.

19 39. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have  
20 suffered injury. The absence of accurate information on their wage statements has prevented earlier  
21 challenges to Defendants' unlawful pay practices, will require discovery and mathematical  
22 computations to determine the amount of wages owed, and will cause difficulty and expense in  
23 attempting to reconstruct time and pay records. Defendants' conduct led to the submission of  
24 inaccurate information about wages and amounts deducted from wages to state and federal  
25 government agencies. As a result, Plaintiff and the Class Members are required to participate in this  
26 lawsuit and create more difficulty and expense for Plaintiff and the Class Members from having to  
27 reconstruct time and pay records than if Defendants had complied with its legal obligations.

28 40. Pursuant to California Labor Code section 226(e), Plaintiff and the Class Members  
are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226  
violation occurred and one hundred dollars per employee per violation for each subsequent pay  
period, not to exceed an aggregate penalty of four thousand dollars per employee.

41. Pursuant to California Labor Code § 226(h), Plaintiff and the Class Members are  
entitled to bring an action for injunctive relief to ensure Defendants' compliance with California  
Labor Code § 226(a). Injunctive relief is warranted because Defendants continues to provide

1 currently employed Class Members with inaccurate wage statements in violation of California Labor  
2 Code § 226(a) and currently employed Class Members have no adequate legal remedy for the  
3 continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct.  
4 Injunctive relief is the only remedy available for ensuring Defendants' compliance with California  
5 Labor Code § 226(a).

6 42. Pursuant to California Labor Code §§ 226(e) and 226(h), Plaintiff and the Class  
7 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable  
8 attorneys' fees, and costs of suit.

9  
10 **SIXTH CAUSE OF ACTION**  
**Failure to Pay All Wages Due and Owing Upon Separation of Employment**  
**(Against All Defendants)**

11 43. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth  
12 herein.

13 44. Pursuant to California Labor Code sections 201 and 202, Plaintiffs and the Class  
14 Members were entitled upon separation of employment to timely payment of all wages earned and  
15 unpaid prior to the separation. Discharged employees are entitled to payment of all wages earned  
16 and unpaid prior to discharge immediately upon termination. Employees who resigned are entitled  
17 to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice  
18 of resignation or, if they gave 72 hours previous notice, they are entitled to payment of all wages  
19 earned and unpaid prior to resignation at the time of resignation.

20 45. Defendants failed to timely pay Plaintiff and the Class Members all wages earned  
21 and unpaid upon separation of employment, in accordance with California Labor Code sections 201,  
22 202, and 203.

23 46. Defendants' failure to pay Plaintiff and the Class Members all wages earned prior to  
24 separation of employment timely in accordance with California Labor Code sections 201, 202, and  
25 203 was willful. Defendants had the ability to pay all wages earned by non-exempt employees prior  
26 to separation of employment in accordance with California Labor Code sections 201, 202, 203, but  
27 intentionally adopted policies or practices incompatible with the requirements of California Labor  
28

1 Code sections 201, 202, and 203. As a result of Defendants' conduct, Plaintiff and the Class  
2 Members have suffered injuries.

3 47. Pursuant to California Labor Code section 203, Plaintiff and the Class Members are  
4 entitled to continuation of their wages, from the day their earned and unpaid wages were due upon  
5 separation until paid, up to a maximum of 30 days.

6 **SEVENTH CAUSE OF ACTION**  
7 **Failure to Provide Paid Sick Time**  
8 **(Against All Defendants)**

9 48. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

10 49. California Labor Code section 246(1)(1) provides that paid sick time for non-exempt  
11 employees be "calculated in the same manner as the regular rate of pay for the workweek in which  
12 the employee uses paid sick time, whether or not the employee actually works overtime in the  
13 workweek."

14 50. California Labor Code section 246(1)(2) further provides that paid sick time for non-  
15 exempt employees be "calculated by dividing the employee's total hours worked in the full pay  
16 periods of the prior 90 days of employment.

17 51. Defendants violated Labor Code section 246 by failing to pay all owed sick leave  
18 time. Based on information and belief, Defendants did not provide Plaintiff and the Class Members  
19 with any sick leave pay or Defendants improperly accrued the amount of sick leave pay owed for  
20 failure to base the owed sick leave pay on the correct number of hours worked. Furthermore,  
21 Defendants failed to provide notice of the correct sick leave amount balance left for Plaintiff and  
22 the Class Members.

23 **EIGHTH CAUSE OF ACTION**  
24 **Failure to Maintain Accurate Records**  
25 **(Against All Defendants)**

26 52. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

27 53. California Labor Code sections 226 and 1174-75 require an employer to keep  
28 accurate records of all hours an employee works.

54. California Labor Code section 1174.5 provides that "[a]ny person employing labor

1 who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate  
2 and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil  
3 penalty of five hundred dollars (\$500).”

4 55. Section 7(A)(3) of the IWC Wage Orders similarly requires an employer to keep  
5 accurate records showing when an employee begins and ends each meal period.

6 56. Plaintiff is informed and believe that Defendants failed to maintain accurate records  
7 in compliance with these statutes. Among other things, Defendants failed to record the true start  
8 and stop times of all meal periods owed to Plaintiff and the Class Members and failed to record the  
9 true start and stop times of shifts for Plaintiff and the Class Members.

10 57. Plaintiff and the Class Members therefore seek damages and penalties as a result of  
11 these violations.

12 **NINTH CAUSE OF ACTION**  
13 **Unfair Competition**  
14 **(Against All Defendants)**

15 58. Plaintiff incorporates by reference all preceding paragraphs as if fully alleged herein.

16 59. The unlawful conduct of Defendants alleged herein constitutes unfair competition  
17 within the meaning of California Business and Professions Code section 17200. This unfair conduct  
18 includes Defendant’s use of policies and procedures which resulted in, *inter-alia*, failure to pay  
19 minimum and overtime wages, failure to authorize or permit, or provide, all required meal and rest  
20 periods or pay proper premiums in lieu thereof, failure to provide proper notice and pay of sick time  
21 benefits, failure to furnish complete and accurate itemized wage statements; failure to maintain  
22 accurate time records, and failure to timely pay all wages due upon separation of employment. Due  
23 to its unfair and unlawful business practices in violation of the California Labor Code, Defendants  
24 have gained a competitive advantage over other comparable companies doing business in the State  
25 of California that comply with their obligations to authorize or permit rest and meal periods or pay  
26 proper meal and rest period premiums in lieu thereof, to provide proper notice and accrue and pay  
27 all sick leave pay, to provide complete and accurate itemized wage statements, to pay all owed  
28 minimum and overtime wages, to maintain accurate time records, and to pay all wages due upon

separation of employment of their employees.

60. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injury in fact and lost money or property, as described in more detail above. Pursuant to California Business and Professions Code section 17200, et seq., Plaintiff and Class Members are entitled to restitution of all wages and other monies rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of its unlawful and unfair business practices. Plaintiff also seeks an injunction against Defendants on behalf of the Class Members enjoining Defendants, and any and all persons acting in concert with it, from engaging in each of the unlawful practices, policies and patterns set forth herein.

## TENTH CAUSE OF ACTION

## **Violation of the Private Attorneys General Act of 2004**

**(By Plaintiff, Aggrieved Employees, and the State of California Against All Defendants)**

61. Plaintiff incorporates all preceding paragraphs as if full alleged herein.

62. Plaintiff brings this action under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of California and all Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

All current and former non-exempt workers who were employed by Defendants in California at any time from June 24, 2019, through the present (“PAGA Period”).

63. Plaintiff is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as she was employed by Defendants during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself, the State of California, and all other Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. Plaintiff has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as she was employed by Defendants and is thereby affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff

1 has authority to seek penalties for all known violations committed by the employer – regardless of  
2 whether Plaintiff experienced all violations personally. *Id.* at 760-761.

3         64.       On June 26, 2020, Plaintiff, through her counsel, gave written notice by online filing  
4 with the California Labor and Workforce Development Agency (“LWDA”) informing it that  
5 Defendants failed to comply with California’s labor laws with regard to the allegations alleged in  
6 this Complaint (“PAGA Letter”). The PAGA Letter was sent to Defendants via certified mail.

7         65.       The PAGA Letter outlined Plaintiff’s claims for violations of the California Labor  
8 Code and the applicable wage orders on behalf of herself, the State of California and other  
9 Aggrieved Employees.

10        66.       The LWDA did not provide notice of its intention to investigate Defendants’  
11 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the  
12 alleged violations were curable, Defendants failed to cure within the time allotted by PAGA.  
13 Accordingly, Plaintiff has exhausted the administrative remedies as required by Labor Code section  
14 2699.3. Consequently, Plaintiff’s right to file the instant lawsuit has duly accrued.

15        67.       Plaintiff seeks to recover the PAGA civil penalties through a representative action  
16 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th  
17 969. Therefore, class certification of the PAGA claims is not required.

18        68.       From one year prior to Plaintiff’s filing of the required PAGA notice with the  
19 LWDA, and continuing through the present, as alleged above, Defendants violated California Labor  
20 Code sections 201-203, 226, 226.7, 245-248.5, 510, 512, 1174, 1194, 1197, 2802, and all relevant  
21 sections of the applicable Wage Orders, as to Plaintiff and Aggrieved Employees. These violations  
22 subject Defendants to civil penalties as set forth in the foregoing statutes as well as other  
23 provisions of the Labor Code, including without limitation, Labor Code sections 203, 226,  
24 226.3, 256, 1174.5, 1197.1 and 2699.

25        69.       As set forth above, Defendants have committed numerous violations of the California  
26 Labor Code due to including but not limited to their failure to pay all owed minimum wages and all  
27 owed overtime wages, failure to provide lawful meal and rest periods or compensation in lieu  
28 thereof, failure to provide accurate wage statements, failure to timely pay all wages owed upon

1 separation of employment, failure to provide paid sick time, failure to maintain accurate records,  
2 and failure to reimburse for business expenses as alleged above. PAGA penalties are in addition to  
3 any other relief available under the Labor Code.

4 70. Under the provisions of PAGA and the following Labor Code sections, 201-203, 226,  
5 226.7, 245-248.6, 510, 512, 1174, 1194, 1197, and all relevant sections of the applicable Wage  
6 Orders, as well as all interpretations of these laws by California Courts and administrative bodies,  
7 as well as any other law that is enforceable through PAGA, Defendants are liable for the following  
8 penalties:

- 9 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant  
10 California Labor Code provisions listed herein only if permitted by the PAGA statute,  
11 pursuant to Labor Code section 2699(a); and
- 12 b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations  
13 without a civil penalty recoverable under the PAGA, all in the default amounts provided  
14 by Labor Code section 2699(f).
- 15 c. The proper measure of penalties under PAGA is the number of violations, whether those  
16 violations were committed as against PLAINTIFF or any Aggrieved Employee, whether  
17 a party to this action or not.

18 71. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,  
19 Plaintiff is entitled to recover civil penalties, costs, and attorney's fees.

#### 20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for relief and judgment, on behalf of herself, Aggrieved  
22 Employees, and the Class Members:

- 23 1. For an order that the action be certified as a class action;
- 24 2. For an order that Plaintiff be appointed class representative;
- 25 3. For an order that counsel for Plaintiff be appointed class counsel;
- 26 4. For compensatory damages according to proof;
- 27 5. For an order requiring Defendants to make restitution of all amounts wrongfully  
28 withheld from Plaintiff and the Class Members;

- 1           6.       For pre-judgment interest as permitted by law;  
2           7.       For attorney's fees and costs reasonably incurred;  
3           8.       For civil penalties according to proof, including PAGA penalties (75% payable to  
4               the LWDA and 25% payable to Aggrieved Employees); and  
5           9.       For such other and further relief that the Court deems just and proper.

6  
7 Dated: October 18, 2022

**CROSNER LEGAL, PC**

8  
9 By: 

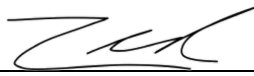
10           Michael R. Crosner, Esq.  
11           Zachary M. Crosner, Esq.  
12           Blake R. Jones, Esq.  
13           Nikki Trenner, Esq.  
14           Attorneys for Plaintiff,  
15           JENNIFER COMBEST

16  
17  
18                               **DEMAND FOR JURY TRIAL**

19           Plaintiff demands a trial by jury on all claims so triable.

20 Dated: October 18, 2022

**CROSNER LEGAL, PC**

21 By: 

22           Michael R. Crosner, Esq.  
23           Zachary M. Crosner, Esq.  
24           Blake R. Jones, Esq.  
25           Nikki Trenner, Esq.  
26           Attorneys for Plaintiff,  
27           JENNIFER COMBEST  
28