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

BRAULIO FREGOSO and DUSTIN
ANGUSTAIN, as aggrieved employees
pursuant to the Private Attorneys General
Act ("PAGA"),

Plaintiffs,

vs.

DESERT VALLEY HOSPITAL, INC., a
California corporation; DESERT VALLEY
MEDICAL GROUP, INC., a
California corporation; PRIME
HEALTHCARE MANAGEMENT, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVDS1912942

**THIRD AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

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

Jury Trial Demanded

Complaint Filed: April 29, 2019

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

SEP 25 2020

BY 
VERONICA GONZALEZ, DEPUTY

BY FAX

1 Plaintiffs Braulio Fregoso and Dustin Angustain, as aggrieved employees and on
2 behalf of all other aggrieved employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and who received at least one wage statement and against whom one or more
9 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
10 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
11 Wage Order were committed, as set forth in this complaint, at any time between one year prior
12 to the filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on February 20, 2019, until judgment (“non-party Aggrieved
14 Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed
15 \$75,000.

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

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

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county and employed Plaintiffs in this county, and thus a substantial portion of the
4 transactions and occurrences related to this action occurred in this county.

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

9 THE PARTIES

10 6. Plaintiff BRAULIO FREGOSO is a resident of Hesperia, California.
11 Defendants employed Plaintiff Fregoso as an hourly paid, non-exempt employee from
12 approximately June 2017 to approximately November 2018. Plaintiff Fregoso worked for
13 Defendants as a Radiology Technologist at their location in Victorville, California. Plaintiff
14 Fregoso typically worked eight (8) to nine (9) hours a day, five (5) to seven (7) days a week,
15 and 40 hours or more per week. At the time his employment ended, Plaintiff Fregoso earned
16 \$36.50 per hour. Plaintiff Fregoso’s job duties included, without limitation, performing
17 diagnostic radiographic procedures, maintaining imaging equipment, preparing procedure
18 rooms for examinations, and assisting with cardiac procedures.

19 7. Plaintiff DUSTIN ANGUSTAIN is a resident of Victorville, California.
20 Defendants employed Plaintiff Angustain as an hourly paid, non-exempt employee from
21 approximately October 2018 to July 19, 2019. Plaintiff Angustain worked for Defendants as a
22 Radiology Technologist at their location in Victorville, California. Plaintiff Angustain
23 typically worked eight (8) to twelve (12) hours a day and five (5) days a week. At the time his
24 employment ended, Plaintiff Angustain earned \$39.00 per hour. Plaintiff Angustain’s job
25 duties included, without limitation, performing diagnostic radiographic procedures,
26 maintaining imaging equipment, preparing procedure rooms for examinations, and assisting
27 with cardiac procedures.

28 8. Defendant DESERT VALLEY HOSPITAL, INC. was and is, upon information

1 and belief, a California corporation, and at all times hereinafter mentioned, an employer
2 whose employees are engaged throughout this county, the State of California, or the various
3 states of the United States of America.

4 9. Defendant DESERT VALLEY MEDICAL GROUP, INC. was and is, upon
5 information and belief, a California corporation, and at all times hereinafter mentioned, an
6 employer whose employees are engaged throughout this county, the State of California, or the
7 various states of the United States of America.

8 10. Defendant PRIME HEALTHCARE MANAGEMENT, INC. was and is, upon
9 information and belief, a California corporation, and at all times hereinafter mentioned, an
10 employer whose employees are engaged throughout this county, the State of California, or the
11 various states of the United States of America.

12 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued
13 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
14 amend the complaint and serve such fictitiously named Defendants once their names and
15 capacities become known.

16 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
17 are the partners, agents, owners, shareholders, managers, or employees of DESERT VALLEY
18 HOSPITAL, INC.; DESERT VALLEY MEDICAL GROUP, INC.; and PRIME
19 HEALTHCARE MANAGEMENT, INC. at all relevant times.

20 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the
21 acts and omissions alleged herein was performed by, or is attributable to, DESERT VALLEY
22 HOSPITAL, INC.; DESERT VALLEY MEDICAL GROUP, INC.; PRIME HEALTHCARE
23 MANAGEMENT, INC.; and/or DOES 1 through 10 (collectively “Defendants” or “DESERT
24 VALLEY”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
25 in concert with, each of the other co-Defendants, and was acting within the course and scope
26 of such agency, employment, joint venture, or concerted activity with legal authority to act on
27 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
28 the official policy of Defendants.

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

5 15. Plaintiffs are informed and believe, and thereon allege, that each of said
6 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
7 omissions, occurrences, and transactions alleged herein.

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

19 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant
20 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
21 and other non-party Aggrieved Employees because Defendants have:

- 22 (a) jointly exercised meaningful control over the work performed by
23 Plaintiffs and other non-party Aggrieved Employees;
- 24 (b) jointly exercised meaningful control over Plaintiffs and other non-party
25 Aggrieved Employees’ wages, hours, and working conditions, including
26 the quantity, quality standards, speed, scheduling, and operative details
27 of the tasks performed by Plaintiffs and other non-party Aggrieved
28 Employees;

- 1 (c) jointly required that Plaintiffs and other non-party Aggrieved
2 Employees perform work which is an integral part of Defendants'
3 businesses; and
- 4 (d) jointly exercised control over Plaintiffs and other non-party Aggrieved
5 Employees as a matter of economic reality in that Plaintiffs and other
6 non-party Aggrieved Employees were dependent on Defendants, who
7 shared the power to set the wages of Plaintiffs and other non-party
8 Aggrieved Employees and determined their working conditions, and
9 who jointly reaped the benefits from the underpayment of their wages
10 and noncompliance with other statutory provisions governing their
11 employment.

12 18. Plaintiffs are informed and believe, and further allege, that at all relevant times
13 there has existed a unity of interest and ownership between Defendants such that any
14 individuality and separateness between the entities has ceased.

15 19. DESERT VALLEY HOSPITAL, INC.; DESERT VALLEY MEDICAL
16 GROUP, INC.; PRIME HEALTHCARE MANAGEMENT, INC.; and DOES 1 through 10 are
17 therefore alter egos of each other.

18 20. Adherence to the fiction of the separate existence of Defendants would permit
19 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
20 from liability for the wrongful acts committed by them under the name DESERT VALLEY
21 HOSPITAL, INC.; DESERT VALLEY MEDICAL GROUP, INC.; and PRIME
22 HEALTHCARE MANAGEMENT, INC.

23 21. Plaintiffs further allege, upon information and belief, that Defendants DESERT
24 VALLEY HOSPITAL, INC.; DESERT VALLEY MEDICAL GROUP, INC.; and PRIME
25 HEALTHCARE MANAGEMENT, INC. are alter egos of each other for the following
26 reasons:

- 27 (a) PRIME HEALTHCARE MANAGEMENT, INC.'s brochure states that
28 "Prime Healthcare Services was founded by Dr. Reddy in 2001. He

repurchased Desert Valley Hospital, which he had built in 1994”;¹

- (b) Each page of DESERT VALLEY HOSPITAL, INC.; DESERT VALLEY MEDICAL GROUP, INC.’s company website states, in the footer: “A member of Prime Healthcare www.primehealthcare.com” and provides an “About Us” page dedicated to Prime Healthcare;²
- (c) DESERT VALLEY HOSPITAL, INC.; DESERT VALLEY MEDICAL GROUP, INC.; and PRIME HEALTHCARE MANAGEMENT, INC. share the same agent for service of process, Cogency Global Inc.; and
- (d) On information and belief, DESERT VALLEY HOSPITAL, INC.; DESERT VALLEY MEDICAL GROUP, INC.; and PRIME HEALTHCARE MANAGEMENT, INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

22. Defendants operate several hospitals and medical facilities throughout the High Desert region of Southern California, including a 148-bed hospital, Desert Valley Hospital, in Victorville, California. Upon information and belief, Defendants maintain a single, centralized Human Resources department in Victorville, California, which is responsible for collecting and processing all new-hire paperwork, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest break policies, to employees throughout California.

23. In particular, Plaintiffs and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies,

¹ See Prime Healthcare Services Brochure, https://www.primehealthcare.com/documents/Prime_PrimeBrochure_120306.pdf (last accessed April 18, 2019). See also Prime Healthcare Services, “The Prime Story,” <https://www.primehealthcare.com/About-Prime/The-Prime-Story.aspx> (last accessed April 18, 2019).

² See Desert Valley Hospital: About Us, “About Prime Healthcare,” <https://www.dvmc.com/About-Us/About-Prime-Healthcare.aspx> (last accessed April 18, 2019).

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

5 24. On information and belief, all transactions regarding hiring, terminations,
6 promotions, pay increases, and employee transfers, etc., relating to Defendants' non-exempt,
7 hourly paid California employees were submitted to and processed by Defendants' HR
8 department in Victorville, California. Additionally, on information and belief, Defendants'
9 corporate records, business records, data, and other information related to Defendants,
10 including, in particular, HR records pertaining to Defendants' non-exempt, hourly paid
11 California employees, are also maintained at Defendants' corporate headquarters in
12 Victorville, California.

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

21 26. Defendants continue to employ non-exempt, hourly paid employees within
22 California.

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

27 28. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
28 non-party Aggrieved Employees were not paid for all hours worked because all hours worked

1 were not recorded.

2 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
4 receive certain wages for overtime compensation and that they were not receiving certain
5 wages for overtime compensation.

6 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that other non-party Aggrieved Employees were entitled to be paid at a
8 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
9 all income derived from shift differential pay, incentive pay, non-discretionary bonuses,
10 and/or other forms of compensation.

11 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
13 receive at least minimum wages for compensation and that they were not receiving at least
14 minimum wages for work that was required to be done off-the-clock. In violation of the
15 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
16 least minimum wages for work done off-the-clock.

17 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
19 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
20 at their regular rates of compensation when they were not provided with timely, uninterrupted,
21 thirty (30) minute meal periods and that Plaintiffs and other non-party Aggrieved Employees
22 were not provided with all meal periods or payment of one (1) additional hour of pay at their
23 regular rates of compensation when they did not receive a timely, uninterrupted, thirty (30)
24 minute meal period.

25 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
27 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
28 of one (1) additional hour of pay at their regular rates of compensation when they were not

1 authorized and permitted to take a compliant rest period. In violation of the California Labor
2 Code, Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted
3 to take compliant rest periods, nor did Defendants provide Plaintiffs and other non-party
4 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
5 compensation when they were not authorized and permitted to take a compliant rest period.

6 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
8 receive complete and accurate wage statements in accordance with California law. In
9 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
10 were not provided complete and accurate wage statements.

11 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that they had a duty to maintain accurate and complete payroll records in
13 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
14 and intentionally failed to do so.

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

21 37. Plaintiffs are informed and believes, and thereon alleges, that Defendants knew
22 or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled
23 to timely payment of all wages earned upon termination of employment. In violation of the
24 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
25 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
26 meal and rest period premiums, and reporting time pay, within permissible time periods.

27 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiff Angustain and other non-party Aggrieved Employees were

1 entitled to be paid reporting time pay when they reported to work for their scheduled shift but
2 were put to work for less than half of the regular schedule. In violation of the California
3 Labor Code, Defendants did not pay Plaintiff Angustain and other non-party Aggrieved
4 Employees all reporting time pay due.

5 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
7 receive reimbursement for all business-related expenses and costs they incurred during the
8 course and scope of their employment, and that they did not receive reimbursement of
9 applicable business-related expenses and costs they incurred.

10 40. Plaintiffs are informed and believe, and thereon allege, that at all times herein
11 mentioned, Defendants knew or should have known that they had a duty to compensate
12 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
13 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
14 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
15 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

25 43. Plaintiffs and other current and former employees of Defendants are "aggrieved
26 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
27 or former employees and one or more of the alleged violations were committed against them.

28 44. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved

1 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
2 following requirements have been met:

- 3 (a) The aggrieved employee shall give written notice by online filing
4 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
5 to the employer of the specific provisions of the California Labor Code
6 alleged to have been violated, including the facts and theories to support
7 the alleged violations.
- 8 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
9 2699.3(a) and any employer response to that notice shall be
10 accompanied by a filing fee of seventy-five dollars (\$75).
- 11 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
12 employer and the aggrieved employee by certified mail that it does not
13 intend to investigate the alleged violation within sixty (60) calendar
14 days of the postmark date of the Employee’s Notice. Upon receipt of
15 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
16 five (65) calendar days of the postmark date of the Employee’s Notice,
17 the aggrieved employee may commence a civil action pursuant to
18 California Labor Code section 2699 to recover civil penalties in addition
19 to any other penalties to which the employee may be entitled.

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

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

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(c) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The employer may cure the alleged violation within thirty-three (33)
5 calendar days of the postmark date of the notice. The employer shall
6 give written notice by certified mail within that period of time to the
7 aggrieved employee or representative and the agency if the alleged
8 violation is cured, including a description of actions taken, and no civil
9 action pursuant to Section 2699 may commence. If the alleged violation
10 is not cured within the 33-day period, the employee may commence a
11 civil action pursuant to Section 2699.

12 46. On February 20, 2019, Plaintiff Fregoso provided written notice by online
13 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
14 California Labor Code alleged to have been violated, including facts and theories to support
15 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
16 Fregoso's written notice was accompanied with the applicable filing fee of seventy-five
17 dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Fregoso's
18 written notice and assigned Plaintiff Fregoso PAGA Case Number LWDA-CM-668338-19.
19 On April 24, 2019, Plaintiff Fregoso sent an amended written notice by online filing to the
20 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
21 Code alleged to have been violated, supplementing and clarifying the facts and theories to
22 support the alleged violations set forth in his original LWDA notice, in accordance with
23 California Labor Code section 2699.3. True and correct copies of Plaintiff Fregoso's written
24 notices to the LWDA and Defendants dated February 20, 2019 and April 24, 2019 are
25 attached hereto as "Exhibit 1."

26 47. On June 26, 2020, Plaintiff Angustain provided written notice by online filing
27 to the LWDA and by certified mail to Defendants of the specific provisions of the California
28 Labor Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff Angustain's
2 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
3 The LWDA PAGA Administrator has confirmed receipt of Plaintiff Angustain's written
4 notice and assigned Plaintiff Angustain PAGA Case Number LWDA-CM-794765-20. A true
5 and correct copy of Plaintiff Angustain's written notice to the LWDA and Defendants dated
6 June 26, 2020, is attached hereto as "Exhibit 2."

7 48. As of the filing date of this amended complaint, the required time has passed
8 since Plaintiffs sent the LWDA Notices described above, and the LWDA has not responded
9 that it intends to investigate Plaintiffs' claims, and Defendants have not cured the violations.

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

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

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

21 52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
22 2699.3(a), 2699.3(c), and 2699.5, Plaintiffs, acting in the public interest as a private attorneys
23 general, seek assessment and collection of civil penalties for themselves, all other non-party
24 Aggrieved Employees, and the State of California against Defendants for violations of
25 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
26 1182.12, 1194, 1197, 1198, and 2802.

1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

4 53. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

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

12 55. Labor Code section 558(a) provides “[a]ny employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare
15 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
16 dollars (\$50) for each underpaid employee for each pay period for which the employee was
17 underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was underpaid” Labor
19 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
20 to any other civil or criminal penalty provided by law.” Plaintiffs, acting in the public interest
21 as private attorneys general, seek assessment and collection of civil penalties under Labor
22 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
23 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
24 and the applicable IWC wage order. Plaintiffs, acting in the public interest as private
25 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558
26 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
27 applicable IWC wage order.

28 56. Defendants’ conduct, as alleged herein, violates numerous sections of the

1 California Labor Code, including, but not limited to, the following:

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

- 1 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay
2 Plaintiffs and other non-party Aggrieved Employees all earned wages
3 upon termination as set forth below;
- 4 (i) Violation of Labor Code section 1198 and the applicable IWC wage
5 order for failure to pay reporting time pay when Plaintiff Angustain and
6 other non-party Aggrieved Employees were put to work for less than
7 half of their regular scheduled shifts, as set forth below; and
- 8 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
9 and other non-party Aggrieved Employees for all business expenses
10 necessarily incurred, as set forth below.

11 **FAILURE TO PAY OVERTIME**

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

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

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

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

27 60. The applicable IWC Wage Order further provides that Defendants are and were
28 required to pay Plaintiffs and other non-party Aggrieved Employees working more than

1 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
2 of pay. An employee's regular rate of pay includes all remuneration for employment paid to,
3 or on behalf of, the employee, including incentive pay and non-discretionary bonuses.

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

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

16 63. First, during the relevant time period, Defendants had, and continue to have, a
17 company-wide policy of staffing their locations strictly based on a labor budget set by
18 Defendants' corporate office. Defendants' use of labor budgets resulted in chronic
19 understaffing, such that there were too few employees on duty to handle the workload and
20 provide uninterrupted meal period coverage. As a result of Defendants' systemic utilization
21 of labor budgets, Plaintiffs and other non-party Aggrieved Employees were not provided
22 adequate meal period coverage to allow them to be relieved of their duties for compliant meal
23 periods and/or were required to perform pre-shift work while off-the-clock. For example,
24 when Plaintiff Fregoso and other non-party Aggrieved Employees were required to prepare a
25 room for an early-morning procedure, they were expected to arrive one (1) hour before the
26 procedure was scheduled to begin their tasks, but were only permitted to clock in 30 minutes
27 before the procedure. This resulted in Plaintiff Fregoso and other non-party Aggrieved
28 Employees spending 30 minutes setting up their equipment while off-the-clock, work for

1 which they were not paid. As another example, Plaintiff Angustain and other non-party
2 Aggrieved Employees were required to confer with medical device representatives, during
3 their unpaid meal periods, in order to discuss medical devices and their particular benefits.
4 Defendants also required Plaintiff Angustain and other non-party Aggrieved Employees to
5 discuss their department's weekly agenda while off-the-clock during meal periods.

6 64. Second, because Defendants frowned upon employees accruing meal period
7 penalties, Defendants' supervisors pressured Plaintiffs and other non-party Aggrieved
8 Employees to clock out for meal periods regardless of whether they were taken, in order to
9 create the appearance of compliant meal periods. This oppressive conduct was in order to
10 strictly limit meal penalties that Defendants would otherwise owe to employees. As stated,
11 Defendants' failure to provide adequate meal period coverage for Plaintiffs and other non-
12 party Aggrieved Employees, such that they could be relieved of their duties to take all timely,
13 uninterrupted thirty (30) minute meal periods, led to them working off-the-clock during meal
14 periods to complete their assigned tasks. For example, Plaintiffs were routinely required to
15 perform work after they clocked out for their unpaid meal periods. Defendants did not
16 compensate Plaintiffs and other non-party Aggrieved Employees for the time they spent
17 working during meal periods.

18 65. Third, Defendants utilized an electronic timekeeping system that automatically
19 clocked employees out for 30 minutes during meal periods regardless of whether they
20 continued to work during their meal periods. Defendants' timekeeping system, which was
21 used on a company-wide basis, essentially locked employees out from clocking back in until
22 30 minutes had elapsed. Thus, when Plaintiffs and other non-party Aggrieved Employees had
23 their meal periods cut short or interrupted, they were not able to adjust their time records
24 accordingly and Defendants thus failed to compensate them for this off-the-clock work.

25 66. Fourth, Defendants have, on a company-wide basis, failed to schedule meal
26 periods. This company-wide failure to schedule meal periods coupled with the heavy
27 workload and pressure from Defendants to complete assigned tasks impeded Plaintiffs and
28 other non-party Aggrieved Employees from taking all meal periods. As a result, Plaintiffs and

1 other non-party Aggrieved Employees were not always provided with uninterrupted 30-minute
2 meal periods. During their employment, Plaintiffs regularly worked through their meal
3 periods in order to complete assigned tasks.

4 67. Fifth, Defendants have, on a company-wide basis, required their employees
5 perform work while off-the-clock, due to Defendants' labor budgeting practices. Plaintiff
6 Angustain and other non-party Aggrieved Employees were required to attend mandatory
7 public relations events, but were not compensated for their time. For example, Plaintiff
8 Angustain was required to attend a one-hour "lighting ceremony" event, as well as a dinner at
9 Flemings for a medical device presentation. Plaintiff Angustain and other non-party
10 Aggrieved Employees were not compensated for their travel to and from these events, despite
11 the fact that some of these drives could take two (2) or more hours. As another example, as
12 stated, Plaintiff Fregoso and other non-party Aggrieved Employees were required to perform
13 pre-shift work while off-the-clock, such as setting up their equipment for upcoming
14 procedures. Thus, Plaintiffs and other non-party Aggrieved Employees performed work on
15 their off-days or before or after their shifts, time for which they were not paid.

16 68. Sixth, when scheduled for an "on-call" shift, Defendants required that Plaintiff
17 Angustain and other non-party Aggrieved Employees be "on-call" during certain days of the
18 week. If Defendants required personnel during days when Plaintiff Angustain and other non-
19 party Aggrieved Employees were "on-call," then Plaintiff Angustain and other non-party
20 Aggrieved Employees would have thirty (30) minutes to report in-person to the hospital.
21 Plaintiff Angustain and other non-party Aggrieved Employees were required to keep their
22 personal cellular phones on them, respond to calls immediately, and report to Defendants'
23 hospital while working an "on-call" shift. Plaintiff Angustain and other non-party Aggrieved
24 Employees were engaged to wait and could not engage in personal activities as they had to be
25 ready to travel to the hospital on short notice. If they did not respond in a timely manner,
26 Plaintiff Angustain and other non-party Aggrieved Employees were subject to discipline.
27 When scheduled to be "on-call," Plaintiff Angustain and other non-party Aggrieved
28 Employees were controlled by Defendants because they were forced to put their lives on hold

1 and could not use that time freely for their own purposes. For example, Plaintiff Angustain
2 refrained from making plans altogether while “on-call” because he knew that he had to drop
3 whatever he was doing at a moment’s notice if the hospital to report to his “on-call” shift.
4 Defendants only paid Plaintiff Angustain and other non-party Aggrieved Employees \$5.00
5 each hour for the time they spent waiting to hear whether they needed to report to the hospital.
6 Thus, Defendants failed to fully pay Plaintiff Angustain and other non-party Aggrieved
7 Employees for the time during which they were waiting to receive a call from Defendants and
8 unable to use their time for their own purposes.

9 69. Seventh, and as set forth in Plaintiff Fregoso’s amended letter to the LWDA
10 dated April 24, 2019 and Plaintiff Angustain’s letter to the LWDA, Defendants had a
11 company-wide policy and/or practice of improperly rounding employee clock-in and clock-out
12 duration times to six (6) minute increments in their timekeeping system. Defendants’
13 rounding policy resulted in the failure to compensate Plaintiffs and other non-party Aggrieved
14 Employees fully for all hours worked, causing Plaintiffs and other non-party Aggrieved
15 Employees to not be paid overtime wages for all of the overtime hours they actually worked.
16 Upon information and belief, Defendants’ rounding policy is, and continues to be, unfair and
17 has, over time, resulted in the underpayment of wages to Plaintiffs and other non-party
18 Aggrieved Employees. To the extent Defendants’ rounding policy has taken away time
19 worked that was eligible for overtime, Plaintiffs and other non-party Aggrieved Employees
20 were denied overtime pay for all hours worked.

21 70. Defendants knew or should have known that, as a result of these company-wide
22 practices and their timekeeping system, Plaintiffs and other non-party Aggrieved Employees
23 were performing assigned duties during their meal periods and before and after their
24 scheduled shifts, and thereby performing work for which they were not paid. Defendants
25 further knew or should have known that they did not compensate Plaintiffs and other non-
26 party Aggrieved Employees for this off-the-clock work.

27 71. Because Plaintiffs and other non-party Aggrieved Employees worked shifts of
28 eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock

1 work qualified for overtime premium pay. Therefore, Plaintiffs and other non-party
2 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
3 actually worked.

4 72. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
5 correct overtime rates for the recorded overtime hours that they generated. In addition to an
6 hourly wage, Defendants paid other non-party Aggrieved Employees shift differential pay,
7 incentive pay, and/or non-discretionary bonuses. However, in violation of the California
8 Labor Code, Defendants failed to incorporate all remunerations, including shift differential
9 pay, incentive pay, and/or non-discretionary bonuses, into the calculation of the regular rate of
10 pay for purposes of calculating the overtime wage rates. Therefore, during times when other
11 non-party Aggrieved Employees worked overtime and received shift differential pay,
12 incentive pay, and/or non-discretionary bonuses, Defendants failed to pay all overtime wages
13 by paying lower overtime rates than required.

14 73. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
15 the balance of overtime compensation and failure to include all applicable remuneration in
16 calculating the regular rate of pay for overtime time pay, as required by California law,
17 violates the provisions of California Labor Code sections 510 and 1198. Plaintiffs and other
18 non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code
19 sections 558(a)(1) and (2) and/or 2699(a), (f), and (g).

20 **FAILURE TO PAY MINIMUM WAGES**

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

22 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
23 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
24 to be paid to employees, and the payment of a wage less than the minimum so fixed is
25 unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which
26 an employee is suffered or permitted to work for the employer, whether or not required to do
27 so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal.
28 Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

1 75. As stated, due to Defendants’ company-wide practices and policies, including
2 labor budgeting, resultant understaffing and lack of meal period coverage, and failure to
3 schedule meal periods, Plaintiffs and other non-party Aggrieved Employees were forced to
4 work off-the-clock during unpaid meal periods. Also, as stated above, Defendants did not pay
5 employees for the time they continued to perform tasks during their meal periods because of
6 their policy requiring Plaintiffs and other non-party Aggrieved Employees to clock in and out
7 at designated meal start and end times. Defendants’ timekeeping system also automatically
8 locked employees out for a full 30 minutes for meal periods, which further prevented
9 Plaintiffs and other non-party Aggrieved Employees from recording their actual hours worked.

10 76. In addition, as stated, due to Defendants’ uniform practice of labor budgeting,
11 Plaintiffs and other non-party Aggrieved Employees were required to perform work off-the-
12 clock before and after their shifts without pay, such as traveling to and attending mandatory
13 company public relations events, and setting up equipment for procedures. Furthermore, as
14 set forth above, Defendants systematically, and on a company-wide basis, required Plaintiff
15 Angustain and other non-party Aggrieved Employees to work “on-call” shifts during which
16 they had to put their lives on hold and were restricted from using that time freely for their own
17 purposes. Even though Plaintiff Angustain and other non-party Aggrieved Employees were
18 subject to Defendants’ control during an “on-call” shift, Defendants did not pay Plaintiff
19 Angustain and other non-party Aggrieved Employees at least minimum wages for all hours
20 that they were suffered or permitted to work. Also, as described above, Defendants have a
21 policy of rounding Plaintiffs’ and other non-party Aggrieved Employees’ clock-in and clock-
22 out duration times to six (6) minute increments in their timekeeping system rather than to the
23 minute, resulting in the failure to compensate Plaintiffs and other non-party Aggrieved
24 Employees fully for all hours worked.

25 77. Moreover, during the relevant time period, Defendants maintained and
26 implemented a company-wide policy of requiring all employees to travel to a medical facility,
27 an employee health center, near the Victorville, California hospital. Plaintiffs and other non-
28 party Aggrieved Employees were required to travel to the medical facility to undergo

1 mandatory drug testing, physical examinations, and/or tuberculin (TB) testing on their own
2 time and using their own personal vehicles. At all times, upon information and belief,
3 Defendants were in control of scheduling the date and time for the testing and/or
4 examinations, selecting the provider/facility where the testing and/or examinations were to
5 take place, and determining the scope of the testing and/or examinations. Defendants gave
6 Plaintiffs and other non-party Aggrieved Employees strict instructions to obtain drug testing,
7 physical examinations, and/or TB testing, and Plaintiffs and other non-party Aggrieved
8 Employees underwent the examinations and/or testing for the sole benefit of Defendants. For
9 example, Plaintiffs followed Defendants' instructions and spent over two (2) hours traveling
10 to and from the medical facility designated by Defendants and undergoing the required drug
11 test, physical examination, and/or TB test. However, Defendants did not compensate
12 Plaintiffs and other non-party Aggrieved Employees for all of the time they spent traveling to
13 and from medical facilities or for the time they spent undergoing drug testing, physical
14 examinations, and/or TB testing.

15 78. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
16 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
17 hours did not qualify for overtime premium payment, Defendants did not pay at least
18 minimum wages for those hours worked off-the-clock in violation of California Labor Code
19 sections 1182.12, 1194, 1197, and 1198.

20 79. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
21 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
22 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

25 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

26 80. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
27 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs and
28 other non-party Aggrieved Employees' employment by Defendants.

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

9 82. At all relevant times herein set forth, California Labor Code sections 226.7,
10 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
11 meal period mandated by an applicable order of the IWC.

12 83. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
13 and the applicable IWC Wage Order also require employers to provide a second meal break of
14 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
15 employee one (1) additional hour of pay at the employee's regular rate of compensation,
16 except that if the total hours worked is no more than twelve (12) hours, the second meal
17 period may be waived by mutual consent of the employer and the employee only if the first
18 meal period was not waived. The applicable IWC Wage Order further provides that
19 employees in the health care industry who work shifts in excess of eight (8) hours in a
20 workday may waive one of their two meal periods, if the waiver is signed by both the
21 employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

22 84. During the relevant time period, as stated, Defendants' company-wide
23 understaffing, assignment of heavy workloads, and failure to provide adequate meal period
24 coverage, prevented Plaintiffs and other non-party Aggrieved Employees from being relieved
25 of all duties and taking compliant meal periods. As a result of these practices and/or policies,
26 Plaintiffs and other non-party Aggrieved Employees had to work through part or all of their
27 meal periods, have their meal periods interrupted, and/or wait extended periods of time before
28 taking meal periods. During their employment, Plaintiffs routinely worked in excess of six (6)

1 hours without being permitted to take a meal period. As also stated, Defendants' timekeeping
2 system required employees to be clocked out for 30 minutes during meal periods regardless of
3 whether they continued to work during their meal periods. Because Defendants engaged in a
4 scheme of falsifying time records to reflect compliant meal periods and utilized a timekeeping
5 system that prevented employees from clocking back in early from meal periods, Defendants
6 failed to pay Plaintiffs and other non-party Aggrieved Employees for all hours worked and did
7 not provide them meal period premium wages when they continued to perform their assigned
8 duties or took late meal periods.

9 85. Plaintiffs and other non-party Aggrieved Employees did not sign valid meal
10 period waivers on days that they were entitled to meal periods and were not relieved of all
11 duties. For example, all newly hired employees, including Plaintiffs and other non-party
12 Aggrieved Employees, signed Defendants' "Meal Period Waiver for Employee Working Six
13 or Fewer Hours" which did not state that employees may revoke the agreements at any time in
14 writing and are thus facially invalid, in violation of Wage Order 5-2001. Further, the
15 applicable IWC Wage Order provides that meal waivers for healthcare industry employees
16 must be signed by both the employee and employer in order to be valid, and Defendants'
17 "Meal Period Waiver for Healthcare Employees Working Shifts in Excess of 10 Hours" was
18 signed by only Plaintiff Fregoso.

19 86. Moreover, Defendants did not provide Plaintiffs and other non-party Aggrieved
20 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
21 hours in one day and failed to provide them with the opportunity to voluntarily waive their
22 second meal period on any given day. During their employment, Plaintiffs and other non-
23 party Aggrieved Employees regularly worked ten (10) or more hour shifts but were not
24 provided second 30-minute meal periods.

25 87. As a result of Defendants' practices and/or policies, Plaintiffs and other non-
26 party Aggrieved Employees were forced to work in excess of five (5) hours before taking a
27 meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal
28 periods altogether. Defendants knew or should have known that as a result of these policies,

1 Plaintiffs and other non-party Aggrieved Employees were prevented from being relieved of all
2 duties and required to perform some of their assigned duties during meal periods. Defendants
3 further knew or should have known they did not pay Plaintiffs and other non-party Aggrieved
4 Employees meal period premium wages when meal periods were missed, interrupted by work,
5 and/or taken late.

6 88. Moreover, Defendants engaged in a systematic, company-wide practice and/or
7 policy of not paying meal period premiums owed when compliant meal periods were not
8 provided. As a result, Defendants failed to provide Plaintiffs and other non-party Aggrieved
9 Employees compliant meal periods and failed to pay meal period premiums due.
10 Alternatively, to the extent that Defendants did pay meal period premium wages to other non-
11 party Aggrieved Employees, they did so at the incorrect rates. Because Defendants did not
12 properly calculate other non-party Aggrieved Employees' regular rates of pay by including all
13 remunerations, such as shift differential pay, incentive pay, and/or non-discretionary bonuses,
14 any premiums paid for meal period violations were also paid at an incorrect rate and resulted
15 in an underpayment of meal period premium wages.

16 89. Defendants' conduct violates the applicable IWC Wage Order, and California
17 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved
18 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558(a)(1)
19 and (2), and/or 2699(a), (f), and (g).

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

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

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

25 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

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

94. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide policies and/or practices of understaffing and assigning of heavy workloads, prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all duties such that they could take compliant rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with their failure to provide adequate rest period coverage, further impeded and prevented Plaintiffs and other non-party Aggrieved Employees from taking compliant rest periods. Further, as most medical procedures are over four (4) hours in length, if Plaintiff Angustain took a rest period, it was consistently interrupted and cut short prior to the full 10 minutes passing.

95. Additionally, upon information and belief, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiffs and other non-party Aggrieved Employees remain on Defendants’ premises during their rest

1 periods. Upon information and belief, Defendants' company-wide on-premises rest period
2 policy prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of
3 all duties for rest periods and caused them to perform work during rest periods.

4 96. As a result of Defendants' practices and policies, Plaintiffs and other non-party
5 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
6 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
7 were entitled. For example, throughout their employment, Plaintiffs were never authorized or
8 permitted to take a full and complete 10-minute rest period due to Defendants' assignment of
9 heavy workloads and failure to provide sufficient coverage.

10 97. Defendants have also engaged in a company-wide practice and/or policy to not
11 pay rest period premiums owed when compliant rest periods are not permitted or authorized.
12 As a result, Defendants failed to pay Plaintiffs and other non-party Aggrieved Employees the
13 rest period premiums due, in violation of Labor Code section 226.7 and the applicable IWC
14 Wage Order. Alternatively, to the extent that Defendants did pay rest period premium wages
15 to other non-party Aggrieved Employees, they did so at the incorrect rates. Because
16 Defendants did not properly calculate other non-party Aggrieved Employees' regular rates of
17 pay by including all remunerations, such as shift differential pay, incentive pay, and/or non-
18 discretionary bonuses, any premiums paid for rest period violations were also paid at an
19 incorrect rate and resulted in an underpayment of rest period premium wages.

20 98. Defendants' conduct violates the applicable IWC Wage Order and California
21 Labor Code sections 226.7 and 1198. Plaintiffs and other non-party Aggrieved Employees are
22 therefore entitled to recover civil penalties pursuant to Labor Code sections 558(a)(1) and (2),
23 and/or 2699(a), (f), and (g).

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

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

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

3 100. During the relevant time period, Defendants have knowingly and intentionally
4 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
5 inaccurate wage statements. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
6 226(a)(5), and 226(a)(9). Because Defendants deducted time from Plaintiffs' and other non-
7 party Aggrieved Employees' records for meal periods that were interrupted and/or missed
8 (and therefore time for which they should have been paid), did not record the time they spent
9 working off the clock, and improperly rounded their clock-in and clock-out duration times,
10 Defendants did not list the correct amount of gross wages earned by Plaintiffs and other non-
11 party Aggrieved Employees in compliance with section 226(a)(1) and 226(a)(5). For the same
12 reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and
13 other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the
14 applicable hourly rates of pay in effect during the pay period and corresponding accurate
15 number of work hours worked at each hourly rate in violation of section 226(a)(9).

16 101. Additionally, because Defendants did not calculate other non-party Aggrieved
17 Employees' regular rate of pay correctly for purposes of paying overtime and meal and rest
18 period premium wages, Defendants did not list the correct amount of gross wages earned by
19 other non-party Aggrieved Employees in compliance with section 226(a)(1). For the same
20 reason, Defendants failed to list the correct amount of net wages earned by other non-party
21 Aggrieved Employees in violation of section 226(a)(5). Defendants also failed to list all
22 applicable hourly rates in effect during the pay period, namely, rates of pay for meal and rest
23 premium wages due to other non-party Aggrieved Employees, in violation of section
24 226(a)(9).

25 102. The wage statement deficiencies also include, among other things, failing to list
26 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
27 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
28 only the last four digits of his or her social security number or an employee identification

1 number other than a social security number; failing to list the name and address of the legal
2 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
3 employees were paid; and/or failing to state all hours worked as a result of not recording or
4 stating the hours they worked off-the-clock.

5 103. California Labor Code section 1198 provides that the maximum hours of work
6 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
7 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
8 employment of any employees for longer hours than those fixed by the order or under
9 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
10 Wage Order, employers are required to keep accurate time records showing when the
11 employee begins and ends each work period and meal period. During the relevant time
12 period, Defendants failed, on a company-wide basis to record actual hours worked, and
13 thereby failed to keep accurate records of shift and meal period start and stop times for
14 Plaintiffs and other non-party Aggrieved Employees, in violation of section 1198. As stated,
15 Defendants engaged in a company-wide practice of insisting that Plaintiffs and other non-
16 party Aggrieved Employees clock out for meal periods at scheduled times regardless of if and
17 when they were taken to create the appearance of compliant meal period records, and, in doing
18 so, failed to keep accurate records of meal period start and end times for Plaintiffs and other
19 non-party Aggrieved Employees. Furthermore, in light of Defendants’ failure to provide
20 Plaintiffs and other non-party Aggrieved Employees with second 30-minute meal periods to
21 which they were entitled, Defendants failed to keep accurate records of meal start and end
22 times for second meal periods.

23 104. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or establishments

1” During the relevant time period, and in violation of Labor Code section 1174(d),
2 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
3 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
4 as a result of failing to record the off-the-clock hours that they worked and improperly
5 rounding Plaintiffs’ and other non-party Aggrieved Employees’ clock-in and clock-out
6 duration times.

7 105. Because Defendants’ violations of 226(a) and 1174(d) were committed against
8 Plaintiffs and other non-party Aggrieved Employees, Plaintiffs and other non-party Aggrieved
9 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
10 1174.5, and/or 2699(a), (f), and (g).

11 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

12 **VIOLATION OF LABOR CODE SECTION 204**

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

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

27 108. During the relevant time period, Defendants willfully failed to pay Plaintiffs
28 and other non-party Aggrieved Employees all wages due to them within any time period

1 specified by California Labor Code section 204 including, but not limited to, overtime wages,
2 minimum wages, meal and rest period premium wages, and/or reporting time pay. Plaintiffs
3 and other non-party Aggrieved Employees are therefore entitled to recover civil penalties
4 pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

5 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

14 110. During the relevant time period, Defendants willfully failed to pay Plaintiffs
15 and other non-party Aggrieved Employees who are no longer employed by Defendants the
16 earned and unpaid wages set forth above, including but not limited to, overtime wages,
17 minimum wages, meal and rest period premium wages, and/or reporting time pay either at the
18 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

19 111. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees
20 who are no longer employed by Defendants their wages earned and unpaid at the time of
21 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
22 Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved Employees are
23 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
24 (g).

25 **FAILURE TO PAY REPORTING TIME PAY**

26 **VIOLATION OF LABOR CODE SECTION 1198**

27 112. California Labor Code section 1198 makes it illegal to employ an employee
28 under conditions of labor that are prohibited by the applicable wage order. California Labor

1 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
2 shall be the . . . standard conditions of labor for employees. The employment of any employee
3 . . . under conditions of labor prohibited by the order is unlawful.”

4 113. California Code of Regulations, Title 8, section 11050(5)(A) provides that
5 “[e]ach workday an employee is required to report for work and does report, but is not put to
6 work or is furnished less than half said employee’s usual or scheduled day’s work, the
7 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
8 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
9 shall not be less than the minimum wage.” The “primary purpose of the reporting time
10 regulation” is “to guarantee at least partial compensation for employees who report to work
11 expecting to work a specified number of hours, and who are deprived of that amount because
12 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
13 *Cellular*, 209 Cal. App. 4th 556 (2012)

14 114. Upon information and belief, during the relevant time period, Defendants
15 violated California Labor Code section 1198 and California Code of Regulations, Title 8,
16 section 11050(5), because Defendants failed to pay Plaintiff Angustain and other non-party
17 Aggrieved Employees reporting time pay when they reported to work for their scheduled shift
18 but were put to work for less than half of the regularly scheduled day’s work.

19 115. Defendants violated California Labor Code section 1198 and California Code
20 of Regulations, Title 8, section 11050(5), because Defendants failed to pay Plaintiff Angustain
21 and other non-party Aggrieved Employees reporting time pay when they presented themselves
22 as ready for work by waiting at home during a scheduled “on-call” shift for telephonic
23 instructions from Defendants on whether to show up at the hospital for a procedure, but
24 ultimately were not called or told to report to the hospital. Defendants did not pay Plaintiff
25 Angustain and other non-party Aggrieved Employees for at least half of their scheduled day’s
26 work or the required minimum reporting time pay when they were subject to Defendants’ on-
27 call policy and were not called or told to come into the hospital.

28 116. For instance, Plaintiff Angustain waited at home during his scheduled “on-call”

1 shifts as required by Defendants, but sometimes was not called or not required to report to the
2 hospital. When this occurred, Defendants did not pay Plaintiff Angustain and other non-party
3 Aggrieved Employees for at least half of their scheduled “on-call” time or the required
4 minimum reporting time pay.

5 117. Plaintiff Angustain and other non-party Aggrieved Employees are therefore
6 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

8 **VIOLATION OF LABOR CODE SECTION 2802**

9 118. At all times herein set forth, California Labor Code section 2802 provides that
10 an employer must reimburse employees for all necessary expenditures and losses incurred by
11 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
12 to prevent employers from passing off their cost of doing business and operating expenses on
13 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
14 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or
15 equipment are required by the employer or are necessary to the performance of a job, such
16 tools and equipment shall be provided and maintained by the employer, except that an
17 employee whose wages are at least two (2) times the minimum wage provided herein may be
18 required to provide and maintain hand tools and equipment customarily required by the trade
19 or craft.”

20 119. First, during the relevant time period, as mentioned, Defendants had a
21 company-wide policy of requiring Plaintiffs and other non-party Aggrieved Employees to
22 travel in their own personal vehicles to medical facilities to undergo mandatory drug testing,
23 physical examinations, and/or tuberculin (“TB”) testing, but did not reimburse them for their
24 travel expenses, including mileage. Defendants, on a company-wide basis, required that
25 Plaintiffs and other non-party Aggrieved Employees travel in their own personal vehicles and
26 on their own time to designated medical facilities to undergo mandatory drug testing, physical
27 examinations, and/or TB testing. At all times, Defendants were in control of scheduling the
28 date and time for the testing and/or examinations, selecting the provider or facility where the

1 testing and/or examinations were to take place, and determining the scope of the testing and/or
2 examinations.

3 120. For example, Defendants gave Plaintiffs strict instructions to obtain drug
4 testing, physical examinations, and/or TB testing, and Plaintiffs underwent the testing and
5 examinations for the sole benefit of Defendants. Plaintiffs followed Defendants' instructions,
6 traveled to the medical facility designated by Defendants, an employee health center, near the
7 Victorville, California hospital, and underwent mandatory drug testing, physical examination,
8 and/or TB testing. As described above, Plaintiffs drove 30 miles roundtrip to undergo a
9 mandatory drug test, physical examination, and TB test per Defendants' instructions, but were
10 not reimbursed for their mileage to and from the medical facility. Although Defendants
11 required Plaintiffs and other non-party Aggrieved Employees to undergo drug testing,
12 physical examinations, and/or TB testing, Defendants failed to reimburse them for their travel
13 expenses.

14 121. Second, during the relevant time period, Defendants, on a company-wide basis,
15 required Plaintiff Angustain and other non-party Aggrieved Employees to use their own
16 personal vehicles to attend mandatory training and/or conferences and carry out their job
17 duties, but failed to reimburse them for the cost of their work-related vehicle and travel
18 expenses. Although Defendants required Plaintiff Angustain and other non-party Aggrieved
19 Employees to utilize their vehicles and incur associated costs to attend mandatory training
20 and/or conferences, Defendants failed to reimburse them for these costs.

21 122. Third, during the relevant time period, Defendants, on a company-wide basis,
22 required that Plaintiff Angustain and other non-party Aggrieved Employees utilize their
23 personal cellular phones to carry out their job duties, but failed to reimburse them for the costs
24 of their cellular phone and/or data plans. For example, Plaintiff Angustain was required to use
25 his personal cellular phone to perform his job duties, such as communicating with his
26 supervisors to discuss returning to the hospital while working "on-call." Although Defendants
27 required Plaintiff Angustain to regularly utilize his personal cellular phone to carry out work-
28 related responsibilities, Defendants failed to reimburse him for this cost.

123. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with the actual tools for use on the job, including company vehicles or cellular phones to be used for fulfilling work-related tasks, or reimbursed employees for their cellular phone, travel expenses, and mileage. Instead, Defendants passed these operating costs off onto Plaintiffs and other non-party Aggrieved Employees. Thus, Defendants had, and continue to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

124. Defendants' company-wide policy and/or practice of passing their operating costs on to Plaintiffs and other non-party Aggrieved Employees is in violation of California Labor Code section 2802. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

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

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000).

As to the First Cause of Action

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

1 reimburse business expenses);

2 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
3 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203,
4 204, 226(a), 226.7, 510, 512(a), 516, 558(a)(1) and (2), 1174(d), 1182.12, 1194, 1197, 1198,
5 and 2802;

6 4. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
8 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
9 1194, 1197, 1198, and 2802;

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

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

13
14 Dated: September 25, 2020

Respectfully submitted,

15 Capstone Law APC

16
17 By: 

18 Mark A. Ozzello
19 Brandon Brouillette
20 Brooke W. Waldrop

21 Attorneys for Plaintiffs Braulio Fregoso
22 and Dustin Angustain
23
24
25
26
27
28

EXHIBIT 1

FEBRUARY 20, 2019 Letter



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

February 20, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/207>)

Subject: *Braulio Fregoso v. Desert Valley Hospital, Inc., et al.*

Dear PAGA Administrator:

This office represents Braulio Fregoso in connection with his claims under the California Labor Code. Mr. Fregoso was an employee of DESERT VALLEY HOSPITAL, INC., PRIME HEALTHCARE MANAGEMENT, INC., and/or DESERT VALLEY MEDICAL GROUP, INC. For purposes of this letter, Mr. Fregoso collectively refers to these entities as "DESERT VALLEY."

The employers may be contacted directly at the address below:

DESERT VALLEY HOSPITAL, INC.
16850 BEAR VALLEY RD
VICTORVILLE CA 92395

DESERT VALLEY HOSPITAL, INC.
3300 E GUASTI RD 2ND FL
ONTARIO CA 91761

PRIME HEALTHCARE MANAGEMENT, INC.
3300 E GUASTI RD 3RD FLOOR
ONTARIO CA 91761

DESERT VALLEY MEDICAL GROUP, INC.
16850 BEAR VALLEY ROAD
VICTORVILLE CA 92395

Mr. Fregoso intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Fregoso seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DESERT VALLEY as a non-exempt, hourly-paid employee in California and who received at least one wage statement

(“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DESERT VALLEY employed Mr. Fregoso as an hourly-paid, non-exempt employee from approximately June 2017 to November 2018. Mr. Fregoso worked for DESERT VALLEY as a Radiology Technologist at their location in Victorville, California. He typically worked eight (8) to nine (9) hours a day and five (5) to seven (7) days a week. At the time Mr. Fregoso’s employment with DESERT VALLEY ended, he was compensated approximately \$36.50 per hour. Mr. Fregoso’s job duties included tracking patient cardiac monitors and providing nurses and doctors with notifications of changing patient cardiac rhythms.

DESERT VALLEY committed one or more of the following Labor Code violations against Mr. Fregoso, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

DESERT VALLEY’s Company-Wide and Uniform Payroll and HR Practices

DESERT VALLEY is a California corporation which operates several hospitals and medical facilities throughout the High Desert region of Southern California, including a 148-bed hospital, Desert Valley Hospital, in Victorville, California. On information and belief, DESERT VALLEY’s company headquarters are located in Victorville, California or Ontario, California. Upon information and belief, DESERT VALLEY maintains a centralized Human Resources (HR) department at their headquarters in Victorville, California or Ontario, California, for all non-exempt, hourly-paid employees working for DESERT VALLEY in California, including Mr. Fregoso and other aggrieved employees. At all relevant times, DESERT VALLEY issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly-paid employees in California, including Mr. Fregoso and other aggrieved employees, regardless of their location or position.

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

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

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

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

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

DESERT VALLEY had a company-wide policy of staffing their locations strictly based on a labor budget set by the corporate office. DESERT VALLEY’s use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal period coverage. As a result of DESERT VALLEY’s systemic utilization of labor budgets, Mr. Fregoso and other aggrieved employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods and/or were required to perform pre-shift work while off-the-clock. For example, when Mr. Fregoso and other aggrieved employees were required to prepare a room for an early-morning procedure, they were expected to arrive one (1) hour before the procedure was scheduled to begin their tasks, but were only permitted to clock in 30 minutes before the procedure. This resulted in Mr. Fregoso and other aggrieved employees spending 30 minutes setting up their equipment while off-the-clock.

DESERT VALLEY’s supervisors pressured Mr. Fregoso and other aggrieved employees to clock out for meal periods regardless of whether they were taken to create the appearance of compliant meal periods. As stated, DESERT VALLEY’s failure to provide adequate meal period coverage for Mr. Fregoso and other aggrieved employees such that they could be relieved of their duties to take all timely, uninterrupted thirty (30) minute meal periods, led to them working off-the-clock during meal periods to complete their assigned tasks. For example, four (4) to five (5) times per week Mr. Fregoso was required to perform work after he clocked out for his unpaid meal period. DESERT VALLEY did not compensate Mr. Fregoso or other aggrieved employees for the time they spent working during meal periods.

Further, DESERT VALLEY’s utilized an electronic timekeeping system that automatically clocked employees out for 30 minutes during meal periods regardless of whether they continued to work during their meal periods. DESERT VALLEY’s timekeeping system, which was used on a company-wide basis, essentially locked employees out from clocking back in until 30 minutes had elapsed. Thus, when Mr. Fregoso and other aggrieved employees had their meal periods cut short or interrupted, they were not able to adjust their time records accordingly.

DESERT VALLEY knew or should have known that as a result of these company-wide practices and timekeeping system, Mr. Fregoso and other aggrieved employees were working during meal periods and before their scheduled shifts, and were suffered or permitted to perform work for which they were not paid. DESERT VALLEY also knew, or should have known, that it did not pay Mr. Fregoso and other aggrieved employees for this off-the-clock work. Because Mr. Fregoso and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, much of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Fregoso and other aggrieved employees were not paid overtime wages for all of the overtime hours they worked. DESERT VALLEY's failure to pay Mr. Fregoso and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

Mr. Fregoso and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time within the health care industry is defined in Wage Order No. 5 as "the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated, due to DESERT VALLEY's company-wide practices and policies, and resultant lack of meal break coverage, Mr. Fregoso and other aggrieved employees were forced to forego meal periods and/or have their meal periods interrupted by work, and were not relieved of all duties for unpaid meal periods. Additionally, as stated above, DESERT VALLEY did not pay employees for the time they continued to perform tasks during their meal periods because of their policy requiring Mr. Fregoso and other aggrieved employees to clock in and out at designated meal start and end times. DESERT VALLEY's timekeeping system that automatically locked employees out for a full 30 minutes for meal periods further prevented Mr. Fregoso and other aggrieved employees from recording their actual hours worked. And, as also stated, due to DESERT VALLEY's uniform practice of labor budgeting, Mr. Fregoso and other aggrieved employees were required to perform work off-the-clock before their shifts without pay.

Moreover, DESERT VALLEY maintained and implemented a company-wide policy of requiring all employees to travel to a medical clinic on their own time and using their own personal vehicles to undergo mandatory drug testing, physical examinations, and/or tuberculin (TB) testing. However, DESERT VALLEY did not compensate Mr. Fregoso and other aggrieved employees for the time they spent traveling to and from the testing facilities or for the time they spent undergoing testing. At all times, DESERT VALLEY was in control of scheduling the date and time for the testing, selecting the provider or facility where the testing was to take place, and determining the scope of the exam. Mr. Fregoso followed DESERT VALLEY's instructions and traveled to a medical facility designated by DESERT VALLEY and underwent mandatory drug testing, physical examination, and TB testing. Mr. Fregoso spent over two (2) hours traveling to and from the medical facility and undergoing a mandatory drug test, physical examination, and TB test. DESERT VALLEY did not compensate Mr. Fregoso for this time and did not compensate other aggrieved employees for the time they spent traveling to and from and undergoing the mandatory drug testing, physical examinations, and/or TB testing.

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

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

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

California Labor Code sections 226.7, 512(a), 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

At all relevant times, as stated above, DESERT VALLEY's company-wide understaffing and failure to provide adequate meal break coverage prevented Mr. Fregoso and other aggrieved employees from being relieved of all duties and taking compliant meal periods. As a result of these practices and/or policies, Mr. Fregoso and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. During his employment, Mr. Fregoso routinely worked in excess of six (6) hours without being permitted to take a meal period. As also stated, DESERT VALLEY's timekeeping system required employees to be clocked out for 30 minutes during meal periods regardless of whether they continued to work during their meal periods. Because DESERT VALLEY engaged in a scheme of falsifying time records to reflect compliant meal periods and utilized a timekeeping system that prevented employees from clocking back in early from meal periods, DESERT VALLEY did not pay Mr. Fregoso and other aggrieved employees for all hours worked and did not provide them meal period premium wages when they continued to perform their assigned duties or took late meal periods. Mr. Fregoso and other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties. For example, all newly-hired employees, including Mr. Fregoso and other aggrieved employees, signed DESERT VALLEY's "Meal Period Waiver for Employee Working Six or Fewer Hours" which did not state that employees may revoke the agreements at any time in writing and are thus facially invalid, in violation of Wage Order 5-2001.

Furthermore, DESERT VALLEY did not provide Mr. Fregoso and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day and failed to provide them with the opportunity to voluntarily waive their second meal period on any given day. During their employment, Mr. Fregoso and other aggrieved employees regularly worked ten (10) or more hour shifts but were not provided second 30-minute meal periods. DESERT VALLEY did not present Mr. Fregoso and other aggrieved employees with the opportunity to voluntarily choose whether to waive their second 30-minute meal period on any given day. Instead, DESERT VALLEY had a company-wide policy of requiring all newly-hired employees to sign blanket Meal Period Waivers at or near their time of hire. For example, Mr. Fregoso signed DESERT VALLEY's blanket Meal Period Waivers near the time he was hired on July 5, 2017.

Because DESERT VALLEY took the position that non-exempt, hourly-paid employees had waived their rights to second meal periods for the entirety of their employment, DESERT VALLEY did not provide them with all meal periods to which they were entitled. Specifically, DESERT VALLEY's "Meal Period Waiver for Healthcare Employees Working Shifts in Excess of 10 Hours" form provides, in relevant part,

This certifies that I voluntarily waive one of the two meal periods I would otherwise be entitled to receive on such shifts under California Law when I work more than 10 hours. . . .

I . . . understand that either I or the Hospital may revoke this 'Meal Period Waiver' at any time by providing at least one day's advance notice in writing of the decision to do so. This waiver will remain in effect until I exercise, or the Hospital exercises, the option to revoke it."

DESERT VALLEY's company-wide use of blanket meal waivers signed at or near the time of hire and imposition of the burden on employees to revoke the waivers in writing, discouraged and

impeded Mr. Fregoso and other aggrieved employees from taking all meal periods to which they were entitled. And, DESERT VALLEY's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours due to blanket second meal period waivers discouraged Mr. Fregoso and other aggrieved employees from taking second meal periods.

Further, the applicable IWC Wage Order provides that meal waivers for healthcare industry employees must be signed by both the employee and employer in order to be valid, and the blanket Meal Period Waiver was signed by only Mr. Fregoso.

DESERT VALLEY knew or should have known that as a result of its policies, Mr. Fregoso and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DESERT VALLEY further knew or should have known that they did not pay Mr. Fregoso and other aggrieved employees meal period premium wages when they were missed, late, short, and/or interrupted. As a result, Mr. Fregoso and other aggrieved employees worked through some or all of their meal periods, had their meal periods interrupted to return to work, and/or waited extended periods of time before taking meal periods.

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

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

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

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

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

As with meal periods, DESERT VALLEY's company-wide policies and practices prevented Mr. Fregoso and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, DESERT VALLEY failed to schedule rest periods, which coupled with DESERT VALLEY's failure to provide adequate break coverage, further impeded and prevented Mr. Fregoso and other aggrieved employees from taking compliant rest periods.

As a result, Mr. Fregoso and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all ten (10) minute rest periods to which they were entitled. Throughout his employment, Mr. Fregoso was never authorized or permitted to take a full and complete 10-minute rest period.

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

Accordingly, DESERT VALLEY failed to permit and authorize all rest periods in violation of California Labor Code sections 226.7, 512(a), and 1198. Mr. Fregoso and other aggrieved employees are entitled to penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DESERT VALLEY has not provided Mr. Fregoso and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, DESERT VALLEY has knowingly and intentionally provided Mr. Fregoso and other aggrieved employees with uniform, incomplete and inaccurate wage statements. For example, DESERT VALLEY issued uniform wage statements to Mr. Fregoso and other aggrieved employees that fail to correctly list: gross wages earned; net wages earned; all applicable hourly rates in effect during the pay period, including overtime rates of pay; and the corresponding number of hours worked at each hourly rate. Specifically, DESERT VALLEY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the correct name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DESERT VALLEY failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Fregoso and other aggrieved employees in violation of section 1198. Furthermore, in light of DESERT VALLEY's failure to provide Mr. Fregoso and other

aggrieved employees with second 30-minute meal periods to which they were entitled, DESERT VALLEY kept no records of meal start and end times for second meal periods.

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

Mr. Fregoso and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, DESERT VALLEY failed to pay Mr. Fregoso and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

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

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

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

DESERT VALLEY willfully failed to pay Mr. Fregoso and other aggrieved employees who are no longer employed by DESERT VALLEY all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or

within seventy-two (72) hours of their leaving DESERT VALLEY's employ in violation of California Labor Code sections 201, 202, and 203.

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

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

During the relevant time period, DESERT VALLEY required that Mr. Fregoso and other aggrieved employees undergo a mandatory drug test, physical examination, and/or TB test, but required them to do so at their own expense. As stated, DESERT VALLEY had a company-wide policy requiring that all employees, including Mr. Fregoso and other aggrieved employees, travel to a specified medical clinic on their own time and use their own means of transportation to undergo drug testing, physical examinations, and/or TB testing. At all times, DESERT VALLEY was in control of scheduling the date and time for the exam and/or testing, selecting where the exam and/or testing was to take place, and determining the scope of the exam and/or testing.

During the relevant time period, as stated, Mr. Fregoso followed DESERT VALLEY's instructions and underwent the drug testing, physical examination, and TB test. Mr. Fregoso spent approximately two (2) hours traveling a total of about 30 miles to and from the designated clinic and undergoing the mandatory tests/examination. However, DESERT VALLEY did not compensate Mr. Fregoso for this time or reimburse him for his travel expenses to and from the clinic.

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

Mr. Fregoso and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, as mentioned, DESERT VALLEY had a company-wide policy of requiring Mr. Fregoso and other aggrieved employees to travel in their own personal vehicles to medical clinics to undergo mandatory drug testing, physical examinations, and/or TB testing, but did not reimburse them for their travel expenses. For example, as described above, Mr. Fregoso drove 30 miles roundtrip to undergo a mandatory drug test, physical examination, and TB test per DESERT VALLEY's instructions, but was not reimbursed for his mileage to and from the medical facility.

Furthermore, during the relevant time period, DESERT VALLEY, on a company-wide basis, required that other aggrieved employees use their own personal vehicles to attend mandatory training and/or conferences and carry out their job duties, but failed to reimburse them for the cost of their work-related vehicle and travel expenses. Although DESERT VALLEY required other aggrieved employees to utilize their vehicles and incur associated costs to attend mandatory training and/or conferences, DESERT VALLEY failed to reimburse them for these costs.

DESERT VALLEY could have provided Mr. Fregoso and other aggrieved employees with the actual tools for use on the job, including company vehicles to be used for fulfilling work-related tasks, or reimbursed employees for their actual travel expenses and mileage. Instead, DESERT VALLEY passed these operating costs off onto Mr. Fregoso and other aggrieved employees. Thus, DESERT VALLEY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

DESERT VALLEY's policy and/or practice of passing its operating costs on to Mr. Fregoso and other aggrieved employees by requiring that they use their personal vehicles for business is in violation of California Labor Code section 2802. Mr. Fregoso and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." DESERT VALLEY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Fregoso and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Fregoso seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Mr. Fregoso, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against DESERT VALLEY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,



Anthony Castillo

Copy: DESERT VALLEY HOSPITAL, INC. (via U.S. Certified Mail); PRIME HEALTHCARE FOUNDATION, INC. (via U.S. Certified Mail); DESERT VALLEY MEDICAL GROUP, INC. (via U.S. Certified Mail)

EXHIBIT 1

APRIL 24, 2019 Letter



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

April 24, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/201>)

Subject: *Braulio Fregoso v. Desert Valley Hospital, Inc., et al. – AMENDED;*
LWDA Case No. LWDA-CM-668338-19

Dear PAGA Administrator:

This office represents Braulio Fregoso in connection with his claims under the California Labor Code. Mr. Fregoso was an employee of DESERT VALLEY HOSPITAL, INC.; PRIME HEALTHCARE MANAGEMENT, INC.; and/or DESERT VALLEY MEDICAL GROUP, INC. For purposes of this letter, Mr. Fregoso collectively refers to these entities as “DESERT VALLEY.” We previously provided notice of Mr. Fregoso’s claims to the California Labor and Workforce Development Agency (“LWDA”) on February 20, 2019, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Fregoso’s prior LWDA notice and is intended to clarify the facts and theories supporting his claims.

The employers may be contacted directly at the addresses below:

DESERT VALLEY HOSPITAL, INC.
16850 BEAR VALLEY RD
VICTORVILLE CA 92395

DESERT VALLEY HOSPITAL, INC.
3300 E GUASTI RD 2ND FL
ONTARIO CA 91761

PRIME HEALTHCARE MANAGEMENT, INC.
3300 E GUASTI RD 3RD FLOOR
ONTARIO CA 91761

DESERT VALLEY MEDICAL GROUP, INC.
16850 BEAR VALLEY ROAD
VICTORVILLE CA 92395

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

DESERT VALLEY employed Mr. Fregoso as an hourly-paid, non-exempt employee from approximately June 2017 to November 2018. Mr. Fregoso worked for DESERT VALLEY as a Radiology Technologist at their location in Victorville, California. He typically worked eight (8) to nine (9) hours a day and five (5) to seven (7) days a week. At the time Mr. Fregoso's employment with DESERT VALLEY ended, he was compensated approximately \$36.50 per hour. Mr. Fregoso's job duties included performing diagnostic radiographic procedures, maintaining imaging equipment, preparing procedure rooms for examinations, and assisting with cardiac procedures.

DESERT VALLEY committed one or more of the following Labor Code violations against Mr. Fregoso, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

DESERT VALLEY's Company-Wide and Uniform Payroll and HR Practices

DESERT VALLEY is a California corporation which operates several hospitals and medical facilities throughout the High Desert region of Southern California, including a 148-bed hospital, Desert Valley Hospital, in Victorville, California. On information and belief, DESERT VALLEY's company headquarters are located in Victorville, California or Ontario, California. Upon information and belief, DESERT VALLEY maintains a centralized Human Resources (HR) department at their headquarters in Victorville, California or Ontario, California, for all non-exempt, hourly-paid employees working for DESERT VALLEY in California, including Mr. Fregoso and other aggrieved employees. At all relevant times, DESERT VALLEY issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly-paid employees in California, including Mr. Fregoso and other aggrieved employees, regardless of their location or position.

Upon information and belief, DESERT VALLEY maintains a centralized Payroll department at their corporate headquarters in Victorville, California or Ontario, California which processes payroll for all non-exempt, hourly-paid employees working for DESERT VALLEY in California, including Mr. Fregoso and other aggrieved employees. Further, DESERT VALLEY issues the same formatted wage statements in the same manner for all non-exempt, hourly-paid employees working in California, including Mr. Fregoso and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, DESERT

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

VALLEY utilized the same methods and formulas when calculating wages due to Mr. Fregoso and other aggrieved employees in California.

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

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

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

First, DESERT VALLEY had a company-wide policy of staffing their locations strictly based on a labor budget set by the corporate office. DESERT VALLEY’s use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal period coverage. As a result of DESERT VALLEY’s systemic utilization of labor budgets, Mr. Fregoso and other aggrieved employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods and/or were required to perform pre-shift work while off-the-clock. For example, when Mr. Fregoso and other aggrieved employees were required to prepare a room for an early-morning procedure, they were expected to arrive one (1) hour before the procedure was scheduled to begin their tasks, but were only permitted to clock in 30 minutes before the procedure. This resulted in Mr. Fregoso and other aggrieved employees spending 30 minutes setting up their equipment while off-the-clock, work for which they were not paid.

Second, DESERT VALLEY’s supervisors pressured Mr. Fregoso and other aggrieved employees to clock out for meal periods regardless of whether they were taken to create the appearance of compliant meal periods. As stated, DESERT VALLEY’s failure to provide adequate meal period coverage for Mr. Fregoso and other aggrieved employees such that they could be relieved of their duties to take all timely, uninterrupted thirty (30) minute meal periods, led to them working off-the-clock during meal periods to complete their assigned tasks. For example, four (4) to five (5) times per week, Mr. Fregoso was required to perform work after he clocked out for his unpaid meal period. DESERT VALLEY did not compensate Mr. Fregoso or other aggrieved employees for the time they spent working during meal periods.

Third, DESERT VALLEY utilized an electronic timekeeping system that automatically clocked employees out for 30 minutes during meal periods regardless of whether they continued to work during their meal periods. DESERT VALLEY’s timekeeping system, which was used on a company-wide basis, essentially locked employees out from clocking back in until 30 minutes had elapsed. Thus, when Mr. Fregoso and other aggrieved employees had their meal periods cut short or

interrupted, they were not able to adjust their time records accordingly and DESERT VALLEY thus failed to compensate them for this off-the-clock work.

Fourth, DESERT VALLEY had a company-wide policy and/or practice of improperly rounding employee clock-in and clock-out duration times to six (6) minute increments in their timekeeping system. DESERT VALLEY's rounding policy resulted in the failure to compensate Mr. Fregoso and other aggrieved employees fully for all hours worked, causing Mr. Fregoso and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, DESERT VALLEY's rounding policy is, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Mr. Fregoso and other aggrieved employees. To the extent DESERT VALLEY's rounding policy has taken away time worked that was eligible for overtime, Mr. Fregoso and other aggrieved employees were denied overtime pay for all hours worked.

DESERT VALLEY knew or should have known that as a result of these company-wide practices and timekeeping system, Mr. Fregoso and other aggrieved employees were working during meal periods and before their scheduled shifts, and were suffered or permitted to perform work for which they were not paid. DESERT VALLEY also knew, or should have known, that it did not pay Mr. Fregoso and other aggrieved employees for this off-the-clock work. Because Mr. Fregoso and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, much of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Fregoso and other aggrieved employees were not paid overtime wages for all of the overtime hours they worked. DESERT VALLEY's failure to pay Mr. Fregoso and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

Mr. Fregoso and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time within the health care industry is defined in Wage Order No. 5 as "the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated, due to DESERT VALLEY's company-wide practices and policies, and resultant lack of meal break coverage, Mr. Fregoso and other aggrieved employees were forced to forego meal periods and/or have their meal periods interrupted by work, and were not relieved of all duties for unpaid meal periods. Additionally, as stated above, DESERT VALLEY did not pay employees for the time they continued to perform tasks during their meal periods because of their policy requiring Mr. Fregoso and other aggrieved employees to clock in and out at designated meal start and end times. DESERT VALLEY's timekeeping system that automatically locked employees out for a full 30 minutes for meal periods further prevented Mr. Fregoso and other aggrieved employees from recording their actual hours worked.

In addition, as stated, due to DESERT VALLEY's uniform practice of labor budgeting, Mr. Fregoso and other aggrieved employees were required to perform work off-the-clock before their shifts without pay. Also, as described above, DESERT VALLEY has a policy of rounding Mr. Fregoso's and other aggrieved employees' clock-in and clock-out duration times to six (6) minute increments in their timekeeping system rather than to the minute, resulting in the failure to compensate Mr. Fregoso and other aggrieved employees fully for all hours worked.

Moreover, DESERT VALLEY maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing, physical examinations, and/or tuberculin (TB) testing. However, DESERT VALLEY did not compensate Mr. Fregoso and other aggrieved employees for the time they spent traveling to and from the facilities or for the time they spent undergoing testing and/or examinations. At all times, DESERT VALLEY was in control of scheduling the date and time for the testing and/or examination, selecting the provider or facility where the testing and/or examination was to take place, and determining the scope of the testing and/or examination. Mr. Fregoso followed DESERT VALLEY's instructions and traveled to a medical facility designated by DESERT VALLEY and underwent mandatory drug testing, physical examination, and TB testing. Mr. Fregoso spent over two (2) hours traveling to and from the medical facility and undergoing a mandatory drug test, physical examination, and TB test. DESERT VALLEY did not compensate Mr. Fregoso for this time and did not compensate other aggrieved employees for the time they spent traveling to and from and undergoing the mandatory drug testing, physical examinations, and/or TB testing.

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

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

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

California Labor Code sections 226.7, 512(a), 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

At all relevant times, as stated above, DESERT VALLEY's company-wide understaffing and failure to provide adequate meal break coverage prevented Mr. Fregoso and other aggrieved employees from being relieved of all duties and taking compliant meal periods. As a result of these practices and/or policies, Mr. Fregoso and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. During his employment, Mr. Fregoso routinely worked in excess of six (6) hours without being permitted to take a meal period. As also stated, DESERT VALLEY's timekeeping system required employees to be clocked out for 30 minutes during meal periods regardless of whether they continued to work during their meal periods. Because DESERT VALLEY engaged in a scheme of falsifying time records to reflect compliant meal periods and utilized a timekeeping system that prevented employees from clocking back in early from meal periods, DESERT VALLEY did not pay Mr. Fregoso and other aggrieved employees for all hours worked and did not provide them meal period premium wages when they continued to perform their assigned duties or took late meal periods.

Mr. Fregoso and other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties. For example, all newly-hired employees, including Mr. Fregoso and other aggrieved employees, signed DESERT VALLEY's "Meal Period Waiver for Employee Working Six or Fewer Hours" which did not state that employees may revoke the agreements at any time in writing and are thus facially invalid, in violation of Wage Order 5-2001.

Furthermore, DESERT VALLEY did not provide Mr. Fregoso and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day and failed to provide them with the opportunity to voluntarily waive their second meal period on any given day. During their employment, Mr. Fregoso and other aggrieved employees regularly worked ten (10) or more hour shifts but were not provided second 30-minute meal periods. DESERT VALLEY did not present Mr. Fregoso and other aggrieved employees with the opportunity to voluntarily choose whether to waive their second 30-minute meal period on any given day. Instead, DESERT VALLEY had a company-wide policy of requiring all newly-hired employees to sign blanket Meal Period Waivers at or near their time of hire. For example, Mr.

Fregoso signed DESERT VALLEY's blanket Meal Period Waiver near the time he was hired on July 5, 2017.

Because DESERT VALLEY took the position that non-exempt, hourly-paid employees had waived their rights to one for their two meal periods for the entirety of their employment, DESERT VALLEY did not provide them with all meal periods to which they were entitled. Specifically, DESERT VALLEY's "Meal Period Waiver for Healthcare Employees Working Shifts in Excess of 10 Hours" form provides, in relevant part,

This certifies that I voluntarily waive one of the two meal periods I would otherwise be entitled to receive on such shifts under California Law when I work more than 10 hours. . . .

I . . . understand that either I or the Hospital may revoke this 'Meal Period Waiver' at any time by providing at least one day's advance notice in writing of the decision to do so. This waiver will remain in effect until I exercise, or the Hospital exercises, the option to revoke it."

DESERT VALLEY's company-wide use of blanket meal waivers signed at or near the time of hire discouraged and impeded Mr. Fregoso and other aggrieved employees from taking all meal periods to which they were entitled. And, DESERT VALLEY's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours due to blanket second meal period waivers discouraged Mr. Fregoso and other aggrieved employees from taking second meal periods.

Further, the applicable IWC Wage Order provides that meal waivers for healthcare industry employees must be signed by both the employee and employer in order to be valid, and the blanket Meal Period Waiver was signed by only Mr. Fregoso.

DESERT VALLEY knew or should have known that as a result of its policies, Mr. Fregoso and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DESERT VALLEY further knew or should have known that they did not pay Mr. Fregoso and other aggrieved employees meal period premium wages when they were missed, late, short, and/or interrupted. As a result, Mr. Fregoso and other aggrieved employees worked through some or all of their meal periods, had their meal periods interrupted to return to work, and/or waited extended periods of time before taking meal periods.

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

Accordingly, DESERT VALLEY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), and 1198. Mr. Fregoso and other aggrieved employees are entitled to

civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

As with meal periods, DESERT VALLEY's company-wide policies and practices prevented Mr. Fregoso and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, DESERT VALLEY failed to schedule rest periods, which, coupled with DESERT VALLEY's failure to provide adequate break coverage, further impeded and prevented Mr. Fregoso and other aggrieved employees from taking compliant rest periods.

As a result, Mr. Fregoso and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all ten (10) minute rest periods to which they were entitled. Throughout his employment, Mr. Fregoso was never authorized or permitted to take a full and complete 10-minute rest period.

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

Accordingly, DESERT VALLEY failed to permit and authorize all rest periods in violation of California Labor Code sections 226.7, 512(a), and 1198. Mr. Fregoso and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DESERT VALLEY has not provided Mr. Fregoso and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, DESERT VALLEY has knowingly and intentionally provided Mr. Fregoso and other aggrieved employees with uniform, incomplete and inaccurate wage statements. For example, DESERT VALLEY issued uniform wage statements to Mr. Fregoso and other aggrieved employees that fail to correctly list: gross wages earned; net wages earned; all applicable hourly rates in effect during the pay period, including overtime rates of pay; and the corresponding number of hours worked at each hourly rate. Specifically, DESERT VALLEY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because DESERT VALLEY deducted time from Mr. Fregoso's and other aggrieved employees' records for meal periods that were interrupted, late, and/or missed (and therefore time for which they should have been paid), did not record the time spent Mr. Fregoso and other aggrieved employees spent working off-the-clock, and improperly rounded Mr. Fregoso's and other aggrieved employees' clock-in and clock-out duration times, DESERT VALLEY did not list the correct amount of gross wages and net wages earned by Mr. Fregoso and other aggrieved employees in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, DESERT VALLEY failed to accurately list the total number of the hours worked by Mr. Fregoso and other aggrieved employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate in violation of section 226(a)(9).

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the correct name and address of the legal entity that is the employer; failing to list the

inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DESERT VALLEY failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of shift and meal period start and stop times for Mr. Fregoso and other aggrieved employees in violation of section 1198. As stated, DESERT VALLEY engaged in a company-wide practice of insisting that Mr. Fregoso and other aggrieved employees clock out for meal periods at scheduled times regardless of if and when they were taken to create the appearance of compliant meal period records, and, in doing so, failed to keep accurate records of meal period start and end times for Mr. Fregoso and other aggrieved employees. Furthermore, in light of DESERT VALLEY’s failure to provide Mr. Fregoso and other aggrieved employees with second 30-minute meal periods to which they were entitled, DESERT VALLEY kept no records of meal start and end times for second meal periods.

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month

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

During the relevant time period, DESERT VALLEY failed to pay Mr. Fregoso and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

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

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

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

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

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

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

During the relevant time period, DESERT VALLEY required that Mr. Fregoso and other aggrieved employees undergo a mandatory drug test, physical examination, and/or TB test, but required them to do so at their own expense. As stated, DESERT VALLEY had a company-wide policy requiring that all employees, including Mr. Fregoso and other aggrieved employees, travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing, physical examinations, and/or TB testing. At all times, DESERT VALLEY was in control of scheduling the

date and time for the examination and/or testing, selecting where the examination and/or testing was to take place, and determining the scope of the examination and/or testing.

During the relevant time period, as stated, Mr. Fregoso followed DESERT VALLEY's instructions and underwent the drug testing, physical examination, and TB test. Mr. Fregoso spent approximately two (2) hours traveling a total of about 30 miles to and from the designated medical facility and undergoing the mandatory tests/examination. However, DESERT VALLEY did not compensate Mr. Fregoso for this time or reimburse him for his travel expenses to and from the medical facility.

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, as mentioned, DESERT VALLEY had a company-wide policy of requiring Mr. Fregoso and other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing, physical examinations, and/or TB testing, but did not reimburse them for their travel expenses. For example, as described above, Mr. Fregoso drove 30 miles roundtrip to undergo a mandatory drug test, physical examination, and TB test per DESERT VALLEY's instructions, but was not reimbursed for his mileage to and from the medical facility.

Furthermore, during the relevant time period, DESERT VALLEY, on a company-wide basis, required that other aggrieved employees use their own personal vehicles to attend mandatory training and/or conferences and carry out their job duties, but failed to reimburse them for the cost of their work-related vehicle and travel expenses. Although DESERT VALLEY required other aggrieved employees to utilize their vehicles and incur associated costs to attend mandatory training and/or conferences, DESERT VALLEY failed to reimburse them for these costs.

DESERT VALLEY could have provided Mr. Fregoso and other aggrieved employees with the actual tools for use on the job, including company vehicles to be used for fulfilling work-related tasks, or reimbursed employees for their actual travel expenses and mileage. Instead, DESERT VALLEY passed these operating costs off onto Mr. Fregoso and other aggrieved employees. Thus, DESERT

VALLEY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

DESERT VALLEY's policy and/or practice of passing its operating costs on to Mr. Fregoso and other aggrieved employees by requiring that they use their personal vehicles for business is in violation of California Labor Code section 2802. Mr. Fregoso and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." DESERT VALLEY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Fregoso and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Fregoso seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Mr. Fregoso, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against DESERT VALLEY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,



Anthony Castillo

Copy: DESERT VALLEY HOSPITAL, INC. (via U.S. Certified Mail); PRIME HEALTHCARE FOUNDATION, INC. (via U.S. Certified Mail); DESERT VALLEY MEDICAL GROUP, INC. (via U.S. Certified Mail)

EXHIBIT 2

JUNE 26, 2020 Letter



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June 26, 2020

VIA ONLINE SUBMISSION

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

Subject: *Dustin Angustain v. Desert Valley Hospital, Inc., et al.*

Dear PAGA Administrator:

This office represents Dustin Angustain in connection with his claims under the California Labor Code. Mr. Angustain was an employee of DESERT VALLEY HOSPITAL, INC.; PRIME HEALTHCARE MANAGEMENT, INC.; and/or DESERT VALLEY MEDICAL GROUP, INC. For purposes of this letter, Mr. Angustain collectively refers to these entities as "DESERT VALLEY."

The employers may be contacted directly at the addresses below:

DESERT VALLEY HOSPITAL, INC.
16850 BEAR VALLEY RD
VICTORVILLE CA 92395

DESERT VALLEY HOSPITAL, INC.
3300 E GUASTI RD 2ND FL
ONTARIO CA 91761

PRIME HEALTHCARE MANAGEMENT,
INC.
3300 E GUASTI RD 3RD FLOOR
ONTARIO CA 91761

DESERT VALLEY MEDICAL GROUP, INC.
16850 BEAR VALLEY ROAD
VICTORVILLE CA 92395

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

DESERT VALLEY employed Mr. Angustain as an hourly paid, non-exempt employee from approximately October 2018 to July 19, 2019. Mr. Angustain worked for DESERT VALLEY as a Radiology Technologist at its location in Victorville, California. He typically worked eight (8) to twelve (12) hours a day and five (5) days a week. At the time Mr. Angustain's employment with

DESERT VALLEY ended, he was compensated approximately \$39.00 per hour. Mr. Angustain's job duties included performing diagnostic radiographic procedures, maintaining imaging equipment, preparing procedure rooms for examinations, and assisting with cardiac procedures.

DESERT VALLEY committed one or more of the following Labor Code violations against Mr. Angustain, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

DESERT VALLEY's Company-Wide and Uniform Payroll and HR Practices

DESERT VALLEY HOSPITAL, INC.; PRIME HEALTHCARE MANAGEMENT, INC.; and DESERT VALLEY MEDICAL GROUP, INC. are California corporations which operate several hospitals and medical facilities throughout the High Desert region of Southern California, including a 148-bed hospital, Desert Valley Hospital, in Victorville, California. On information and belief, DESERT VALLEY's company headquarters are located in Victorville, California and/or Ontario, California. Upon information and belief, DESERT VALLEY maintains a centralized Human Resources (HR) department at its headquarters in Victorville, California and/or Ontario, California, for all non-exempt, hourly paid employees working for DESERT VALLEY in California, including Mr. Angustain and other aggrieved employees. At all relevant times, DESERT VALLEY issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Angustain and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2)

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

times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

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

First, DESERT VALLEY had a company-wide policy of staffing its locations strictly based on a labor budget set by the corporate office. DESERT VALLEY's use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal period coverage. As a result of DESERT VALLEY's systemic utilization of labor budgets, Mr. Angustain and other aggrieved employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods while off-the-clock. For example, when Mr. Angustain and other aggrieved employees were required to confer with medical device representatives, during their unpaid meal periods, in order to discuss medical devices and their particular benefits. DESERT VALLEY also required Mr. Angustain and other aggrieved employees to discuss their department's weekly agenda while off-the-clock during meal periods. This resulted in Mr. Angustain and other aggrieved employees performing work during the meal periods, time for which they were not paid.

Second, because DESERT VALLEY frowned upon employees accruing meal period penalties, DESERT VALLEY's supervisors pressured Mr. Angustain and other aggrieved employees to clock out for meal periods regardless of whether meal periods were taken to create the appearance of compliant meal periods. This oppressive conduct was in order to strictly limit meal penalties that DESERT VALLEY would otherwise owe to its aggrieved employees. As stated, DESERT VALLEY's failure to provide adequate meal period coverage for Mr. Angustain and other aggrieved employees such that they could be relieved of their duties to take all timely, uninterrupted thirty (30) minute meal periods, led to them to work off-the-clock during meal periods to complete their assigned tasks. For example, Mr. Angustain was routinely required to perform work after he clocked out for his unpaid meal period. DESERT VALLEY did not compensate Mr. Angustain or other aggrieved employees for the time they spent working during meal periods.

Third, DESERT VALLEY utilized an electronic timekeeping system that automatically clocked employees out for 30 minutes during meal periods regardless of whether they continued to work during their meal periods. DESERT VALLEY's timekeeping system, which was used on a company-wide basis, essentially locked employees out from clocking back in until 30 minutes had elapsed. Thus, when Mr. Angustain and other aggrieved employees had their meal periods cut short or interrupted, they were not able to adjust their time records accordingly and DESERT VALLEY thus failed to compensate them for this off-the-clock work.

Fourth, DESERT VALLEY has, on a company-wide basis, failed to schedule meal periods. This company-wide failure to schedule meal periods coupled with the heavy workload and pressure from DESERT VALLEY to complete assigned tasks impeded Mr. Angustain and other aggrieved employees from taking all meal periods. As a result, Mr. Angustain and other aggrieved employees were not always provided with uninterrupted 30-minute meal periods. During his employment, Mr. Angustain regularly worked through his meal periods in order to complete assigned tasks.

Fifth, DESERT VALLEY has, on a company-wide basis, required its employees perform work while off-the-clock, due to DESERT VALLEY's labor budgeting practices. Mr. Angustain and other aggrieved employees were required to attend mandatory public relations events, but were not compensated for their time. For example, Mr. Angustain was required to attend a one-hour "lighting ceremony" event, as well as a dinner at Flemings for a medical device presentation. Mr. Angustain and other aggrieved employees were not compensated for their travel to and from these events, despite the fact that some of the drives could take two (2) or more hours. Other aggrieved employees were required to perform pre-shift work while off-the-clock, such as setting up their equipment for upcoming procedures. Thus, Mr. Angustain and other aggrieved employees performed work on their off days or before or after their shifts, time for which they were not paid.

Sixth, when scheduled for an "on-call" shift, DESERT VALLEY required that Mr. Angustain and other aggrieved employees be "on-call" during certain days of the week. If DESERT VALLEY required personnel during days when Mr. Angustain and other aggrieved employees were "on-call," then Mr. Angustain and other aggrieved employees would have thirty (30) minutes to report in-person to the hospital. Mr. Angustain and other aggrieved employees were required to keep their personal cellular phones on them, respond to calls immediately, and report to DESERT VALLEY's hospital while working an "on-call" shift. Mr. Angustain and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to the hospital on short notice. If they did not respond in a timely manner, Mr. Angustain and other aggrieved employees were subject to discipline. When scheduled to be "on-call," Mr. Angustain and other aggrieved employees were controlled by DESERT VALLEY because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Mr. Angustain refrained from making plans altogether while "on-call" because he knew that he had to drop whatever he was doing at a moment's notice if the hospital to report to his "on-call" shift. DESERT VALLEY only paid Mr. Angustain and other aggrieved employees \$5.00 each hour for the time they spent waiting to hear whether they needed to report to the hospital. Thus, DESERT VALLEY failed to fully pay Mr. Angustain and other aggrieved employees for the time during which they were waiting to receive a call from DESERT VALLEY and unable to use their time for their own purposes.

Seventh, DESERT VALLEY had a company-wide policy and/or practice of improperly rounding employee clock-in and clock-out duration times to six (6) minute increments in its timekeeping system. DESERT VALLEY's rounding policy resulted in the failure to compensate Mr. Angustain and other aggrieved employees fully for all hours worked, causing Mr. Angustain and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, DESERT VALLEY's rounding policy is, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Mr. Angustain and other aggrieved employees. To the extent DESERT VALLEY's rounding policy has taken away time worked that was eligible for overtime, Mr. Angustain and other aggrieved employees were denied overtime pay for all hours worked.

DESERT VALLEY knew or should have known that as a result of these company-wide practices and timekeeping system, Mr. Angustain and other aggrieved employees were working during meal periods and before their scheduled shifts, and were suffered or permitted to perform work for which they were not paid. DESERT VALLEY also knew, or should have known, that it did not pay Mr. Angustain and other aggrieved employees for this off-the-clock work. Because Mr. Angustain and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, much of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Angustain and other aggrieved employees were not paid overtime wages for all of the overtime hours

they worked. DESERT VALLEY's failure to pay Mr. Angustain and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time within the health care industry is defined in Wage Order No. 5 as "the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated, due to DESERT VALLEY's company-wide practices and policies, including labor budgeting, resultant understaffing and lack of meal period coverage, and failure to schedule meal periods, Mr. Angustain and other aggrieved employees were forced to forego meal periods and/or have their meal periods interrupted by work, and were not relieved of all duties for unpaid meal periods. Additionally, as stated above, DESERT VALLEY did not pay employees for the time they continued to perform tasks during their meal periods because of their policy requiring Mr. Angustain and other aggrieved employees to clock in and out at designated meal start and end times, in order to limit the accrual of meal period penalties. DESERT VALLEY's timekeeping system also automatically clocked employees out for a full 30 minutes for meal periods, which further prevented Mr. Angustain and other aggrieved employees from recording their actual hours worked.

In addition, as stated, due to DESERT VALLEY's uniform practice of labor budgeting, Mr. Angustain and other aggrieved employees were required to perform work off-the-clock before and after their shifts without pay such as traveling to and attending mandatory company public relations events, and setting up equipment for procedures. Furthermore, as set forth above, DESERT VALLEY systematically, and on a company-wide basis, required Mr. Angustain and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Angustain and other aggrieved employees were subject to DESERT VALLEY's control during an "on-call" shift, DESERT VALLEY did not pay Mr. Angustain and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. Also, as described above, DESERT

VALLEY's company-wide timekeeping system rounded Mr. Angustain's and other aggrieved employees' clock-in and clock-out duration times to six (6) minute increments in its timekeeping system, resulting in the failure to compensate Mr. Angustain and other aggrieved employees fully for all hours worked.

Moreover, DESERT VALLEY maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility, an employee health center, near the Victorville, California hospital. Mr. Angustain and other aggrieved employees were required to travel to the medical facility to undergo mandatory drug testing, physical examinations, and/or tuberculin ("TB") testing on their own time and using their own personal vehicles. At all times, DESERT VALLEY was in control of scheduling the date and time for the testing and/or examination, selecting the provider or facility where the testing and/or examination was to take place, and determining the scope of the testing and/or examination. For example, DESERT VALLEY gave Mr. Angustain strict instructions to obtain drug testing, physical examinations and/or TB testing, and Mr. Angustain underwent the testing for the sole benefit of DESERT VALLEY. Mr. Angustain followed DESERT VALLEY's instructions, traveled to the medical facility designated by DESERT VALLEY, and underwent mandatory drug testing, physical examination, and/or TB testing. Mr. Angustain spent nearly two (2) hours traveling to and from the medical facility and undergoing a mandatory drug test, physical examination, and/or TB test. DESERT VALLEY did not compensate Mr. Angustain and other aggrieved employees for the time they spent traveling to and from and undergoing the mandatory drug testing, physical examinations, and/or TB testing.

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

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

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

At all relevant times, as stated above, DESERT VALLEY's company-wide understaffing, assignment of heavy workloads, and failure to provide adequate meal period coverage prevented Mr. Angustain and other aggrieved employees from being relieved of all duties and taking compliant meal periods. As a result of these practices and/or policies, Mr. Angustain and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. During his employment, Mr. Angustain would work in excess of six (6) hours without being permitted to take a meal period. As also stated, DESERT VALLEY's timekeeping system forced employees to be clocked out for 30 minutes during meal periods regardless of whether they continued to work during their meal periods. Because DESERT VALLEY engaged in a scheme of falsifying time records to reflect compliant meal periods and utilized a timekeeping system that prevented employees from clocking back in early from meal periods, DESERT VALLEY did not pay Mr. Angustain and other aggrieved employees for all hours worked and did not provide them meal period premium wages when they continued to perform their assigned duties or took late meal periods.

Mr. Angustain and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. For example, all newly hired employees signed DESERT VALLEY's "Meal Period Waiver for Employee Working Six or Fewer Hours" which did not state that employees may revoke the agreements at any time in writing and are thus facially invalid, in violation of Wage Order 5-2001.

Furthermore, DESERT VALLEY did not provide Mr. Angustain and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day and failed to provide them with the opportunity to voluntarily waive their second meal period on any given day. During their employment, Mr. Angustain and other aggrieved employees regularly worked ten (10) or more hour shifts but were not provided second 30-minute meal periods.

As a result of DESERT VALLEY's practices and/or policies, Mr. Angustain and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. DESERT VALLEY knew or should have known that as a result of its policies, Mr. Angustain and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DESERT VALLEY further knew or should have known that they did not pay Mr. Angustain and other aggrieved employees meal period premium wages when they were missed, late, short, and/or interrupted.

DESERT VALLEY also engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Angustain and other aggrieved employees have not received premium pay for

missed meal periods. Alternatively, to the extent that DESERT VALLEY did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because DESERT VALLEY did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

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

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

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

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

During the relevant time period, DESERT VALLEY regularly failed to authorize and permit Mr. Angustain and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, DESERT VALLEY's company-wide policies and practices, including understaffing and assigning of heavy workloads, prevented Mr. Angustain and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, DESERT VALLEY failed to schedule rest periods, which, coupled with DESERT VALLEY's failure to provide adequate rest period coverage, further impeded and prevented Mr. Angustain and other aggrieved employees from taking compliant rest periods. Further, as most medical procedures are over four (4) hours in length, if Mr. Angustain took a rest period, it was consistently interrupted and cut short prior to the full 10 minutes passing.

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

As a result of DESERT VALLEY's practices and policies, Mr. Angustain and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10

hours without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Angustain was never authorized or permitted to take a full and complete 10-minute rest period due to DESERT VALLEY's assignment of heavy workloads and failure to provide sufficient coverage.

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

Accordingly, DESERT VALLEY failed to permit and authorize all rest periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Angustain and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DESERT VALLEY has not provided Mr. Angustain and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

Because DESERT VALLEY deducted time from Mr. Angustain's and other aggrieved employees' records for meal periods that were interrupted, late, and/or missed (and therefore time for which they should have been paid), did not record their time spent working off-the-clock, and improperly rounded their clock-in and clock-out duration times, DESERT VALLEY did not list the correct amount of gross wages and net wages earned by Mr. Angustain and other aggrieved employees in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, DESERT

VALLEY failed to accurately list the total number of the hours worked by Mr. Angustain and other aggrieved employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate in violation of section 226(a)(9).

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the correct name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DESERT VALLEY failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and stop times for Mr. Angustain and other aggrieved employees. As stated, DESERT VALLEY engaged in a company-wide practice of insisting that Mr. Angustain and other aggrieved employees clock out for meal periods at scheduled times regardless of if and when they were taken to create the appearance of compliant meal period records, and, in doing so, failed to keep accurate records of meal period start and end times for Mr. Angustain and other aggrieved employees. Furthermore, in light of DESERT VALLEY's failure to provide Mr. Angustain and other aggrieved employees with second 30-minute

meal periods to which they were entitled, DESERT VALLEY kept no records of meal start and end times for second meal periods.

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, DESERT VALLEY failed to pay Mr. Angustain and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and reporting time pay, within any time period specified by California Labor Code section 204.

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

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

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

On information and belief, DESERT VALLEY has a company-wide practice and/or policy of paying departing employees their final wages outside of the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Angustain provided written notice to DESERT VALLEY of

his immediate resignation on July 19, 2019; however, DESERT VALLEY did not provide Mr. Angustain with his final paycheck until July 23, 2019, over three days later. Thus, DESERT VALLEY failed to pay Mr. Angustain his final wages within the requisite time limit in violation of Labor Code section 202.

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

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

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

During the relevant time period, DESERT VALLEY required that Mr. Angustain and other aggrieved employees undergo a mandatory drug test, physical examination, and/or TB test, but required them to do so at their own expense. As stated, DESERT VALLEY had a company-wide policy requiring that all employees, including Mr. Angustain and other aggrieved employees, travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing, physical examinations, and/or TB testing. At all times, DESERT VALLEY was in control of scheduling the date and time for the examination and/or testing, selecting where the examination and/or testing was to take place, and determining the scope of the examination and/or testing.

During the relevant time period, as stated, Mr. Angustain followed DESERT VALLEY's instructions and underwent the drug testing, physical examination, and TB test. Mr. Angustain spent approximately two (2) hours traveling a total of about 30 miles to and from the designated medical facility and undergoing the mandatory tests/examination. However, DESERT VALLEY did not compensate Mr. Angustain for this time or reimburse him for his travel expenses to and from the medical facility.

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

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

Violation of California Labor Code § 246 – Failure to Provide Paid Sick Leave Benefits and Written Notice of Paid Sick Leave Benefits

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

Mr. Angustain and other aggrieved employees worked in excess of 30 days for DESERT VALLEY in California and were therefore eligible to receive paid sick leave. During the relevant time period, DESERT VALLEY systematically failed to provide Mr. Angustain and other aggrieved employees paid sick leave of no less than 24 hours or three (3) days because DESERT VALLEY failed to include all "on-call" time and other nonproductive hours worked by Mr. Angustain and other aggrieved employees for purposes of calculating the accrual of sick leave benefits. As a result, DESERT VALLEY failed to provide Mr. Angustain and other aggrieved employees with the correct amount of paid sick leave benefits, in violation of section 246(b)(4).

Additionally, during the relevant time period, DESERT VALLEY has failed to provide Mr. Angustain and other aggrieved employees written notice on wage statements and/or other separate written statements that list the requisite information set forth in Labor Code section 246(i). DESERT VALLEY's ongoing and systematic failure to provide accurate written notice of sick leave benefits to Mr. Angustain and other aggrieved employees violates California Labor Code section 246(i).

Mr. Angustain and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11050(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees

who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

DESERT VALLEY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because DESERT VALLEY failed to pay Mr. Angustain and other aggrieved employees reporting time pay when they presented themselves as ready for work by waiting at home or at work during a scheduled “on-call” shift for telephonic instructions from DESERT VALLEY on whether to show up at the hospital for a procedure, but ultimately were not called or told to report to the hospital. DESERT VALLEY did not pay Mr. Angustain and other aggrieved employees for at least half of their scheduled day’s work or the required minimum reporting time pay when they were subject to DESERT VALLEY’s on-call policy and were not called or told to come into the hospital.

For instance, Mr. Angustain waited at home during his scheduled “on-call” shifts as required by DESERT VALLEY, but sometimes was not called or not required to report to the hospital. When this occurred, DESERT VALLEY did not pay Mr. Angustain and other aggrieved employees for at least half of their scheduled “on-call” time or the required minimum reporting time pay.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, as mentioned, DESERT VALLEY had a company-wide policy of requiring Mr. Angustain and other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing, physical examinations, and/or TB testing, but did not reimburse them for their travel expenses, including mileage. DESERT VALLEY maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing, physical examinations, and/or TB testing. At all times, DESERT VALLEY was in control of scheduling the date and time for the testing and/or examination, selecting the provider or facility where the testing and/or examination was to take place, and determining the scope of the testing and/or examination.

For example, DESERT VALLEY gave Mr. Angustain strict instructions to obtain drug testing, physical examinations, and/or TB testing, and Mr. Angustain underwent the testing and examinations for the sole benefit of DESERT VALLEY. Mr. Angustain followed DESERT VALLEY’s instructions, traveled to the medical facility designated by DESERT VALLEY, and underwent mandatory drug testing, physical examination, and/or TB testing. As described above, Mr. Angustain

drove approximately 30 miles roundtrip to undergo a mandatory drug test, physical examination, and TB test per DESERT VALLEY's instructions, but was not reimbursed for his mileage to and from the medical facility. Although DESERT VALLEY required Mr. Angustain and other aggrieved employees to undergo drug testing, physical examinations, and/or TB testing, DESERT VALLEY failed to reimburse them for their travel expenses.

Second, during the relevant time period, DESERT VALLEY, on a company-wide basis, required that Mr. Angustain and other aggrieved employees use their own personal vehicles to attend mandatory training, conferences, and/or public relations events and carry out their job duties, but failed to reimburse them for the cost of their work-related vehicle and travel expenses. Although DESERT VALLEY required Mr. Angustain and other aggrieved employees to utilize their vehicles and incur associated costs to attend mandatory training, conferences, and/or public relations events, DESERT VALLEY failed to reimburse them for these costs.

Third, during the relevant time period, DESERT VALLEY, on a company-wide basis, required that Mr. Angustain and other aggrieved employees utilize their personal cellular phones to carry out their job duties, but failed to reimburse them for the costs of their cellular phone and/or data plans. For example, Mr. Angustain was required to use his personal cellular phone to perform his job duties, such as communicating with his supervisors to discuss returning to the hospital while working "on-call." Although DESERT VALLEY required Mr. Angustain to regularly utilize his personal cellular phone to carry out work-related responsibilities, DESERT VALLEY failed to reimburse him for this cost.

DESERT VALLEY could have provided Mr. Angustain and other aggrieved employees with the actual tools for use on the job, including company vehicles or cellular phones to be used for fulfilling work-related tasks, or reimbursed employees for the costs of their cellular phone, travel expenses, and mileage. Instead, DESERT VALLEY passed these operating costs off onto Mr. Angustain and other aggrieved employees. Thus, DESERT VALLEY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

DESERT VALLEY's policy and/or practice of passing its operating costs on to Mr. Angustain and other aggrieved employees by requiring that they use their personal vehicles for business is in violation of California Labor Code section 2802. Mr. Angustain and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." DESERT VALLEY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Angustain and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Angustain seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Angustain, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against DESERT VALLEY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'BWaldrop', written in a cursive, flowing style.

Brooke Waldrop

Copy: DESERT VALLEY HOSPITAL, INC. (via U.S. Certified Mail); PRIME HEALTHCARE FOUNDATION, INC. (via U.S. Certified Mail); DESERT VALLEY MEDICAL GROUP, INC. (via U.S. Certified Mail); Simon L. Yang, Seyfarth Shaw LLP, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793 (via U.S. Certified Mail)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of
4 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000,
Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

5 On **September 25, 2020**, I served the document(s) described as:

6 **THIRD AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION**

on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof
[✓] to interested parties as follows [or] [] as stated on the attached service list:

7 **SEE ATTACHED SERVICE LIST**

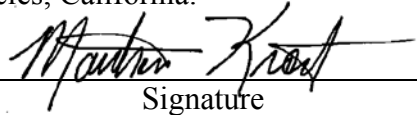
- 8 [✓] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
9 for mailing in the ordinary course of business at Los Angeles, California. I am “readily
10 familiar” with this firm’s practice of collection and processing correspondence for
11 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal
Service that same day in the ordinary course of business with postage thereon fully
prepaid at Los Angeles, California.
- 12 [] **BY PERSONAL SERVICE:** I caused the document, enclosed in a sealed envelope, to
13 be delivered by hand by ProLegal/ProCourier Attorney Service to the offices of the
addressee(s) named herein.
- 14 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California,
15 by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-
mail of record in this action.
- 16 [] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of
17 collection and processing correspondence for overnight delivery. Under that practice,
18 overnight packages are enclosed in a sealed envelope with a packing slip attached
thereto fully prepaid. The packages are picked up by the carrier at our offices or
delivered by our office to a designated collection site.

19 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

20 Executed this **September 25, 2020**, at Los Angeles, California.

21 Matthew Krout

Type or Print Name


Signature

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