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and VICKY WRIGHT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

WENDY SGONTZ, as an individual and
on behalf of all others similarly
aggrieved employees,

Plaintiffs,

vs.

CROSSMARK, INC., a Delaware
corporation; and DOES 1 to 50,
inclusive,

Defendants.

Case No.: 30-2021-01204377-CU-OE-CXC

Assigned for All Purposes to:
Hon. Randall J. Sherman
Dept. CX105

**DECLARATION OF SEPIDEH ARDESTANI
IN SUPPORT OF MOTION FOR APPROVAL
OF SETTLEMENT UNDER PRIVATE
ATTORNEYS GENERAL ACT**

Date: August 9, 2024
Time: 10:00 a.m.
Dept.: CX-105

Reservation No.: 74284280

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1 through April 15, 2020, as a non-exempt event specialist. Her duties included preparing and
2 serving food samples at grocery stores, including the Sam's Club in Fountain Valley. Plaintiff
3 Wright worked for Defendant as a retail merchandiser from 2014 through March 2023. Plaintiff
4 Gregory also worked for Defendant as a retail merchandiser from March 2023 through May 2023,
5 and their duties included setting up and restocking displays at grocery stores and other retail stores
6 for different retail brands, reporting on service visits, and uploading photos of their work through
7 Defendant's mobile application. Both were also required to use their personal vehicles to drive
8 between store locations during a shift.

9 9. On June 3, 2021, after exhausting her administrative remedies with the LWDA,
10 Plaintiff Sgontz filed a representative complaint seeking PAGA civil penalties for (1) failure to
11 provide written notice that sets forth the amount of paid sick leave available to employees on the
12 employee's wage statements, in violation of Labor Code sections 246(i), and (2) failure to issue
13 accurate itemized wage statements in accordance with Labor Code section 226(a)(9), as the wage
14 statements do not provide an accurate overtime rate because instead of multiplying the regular rate
15 of pay by one and one-half, the wage statements provide two overtime rate categories and they
16 each provide corresponding rates that are either the same as the regular rate or half the regular rate,
17 requiring employees to perform extensive calculations to determine what their pay rates were for
18 each corresponding hour worked. The wage statements also violate Labor Code section 226(a)(2)
19 by failing to provide an accurate total number of hours worked during the pay period.

20 10. After filing her complaint, Plaintiff Sgontz initiated written discovery. On March 4,
21 2022, the Court granted Defendant's Motion to Stay the matter pending the U.S. Supreme Court's
22 decision in Viking River Cruises, Inc. v Moriana (2022) 142 S. Ct. 1906, and stayed the case
23 through July 15, 2022. Thereafter, on November 18, 2022, the Court denied Defendant's Motion
24 to Compel Arbitration of Plaintiff Sgontz's individual PAGA claim and dismiss the non-individual
25 PAGA claims. Defendant appealed that ruling in December 2022, and the Parties proceeded with
26 briefing the appeal. In and around May 2023, After Plaintiff filed his responsive brief, the Parties
27 met and conferred to discuss the implications of Adolph v. Uber Technologies (2023) 14
28 Cal.App.5th 1104 on the Sgontz action and pending appeal. Following those discussions, the

1 Parties agreed to explore private mediation and subsequently stipulated to say the matter pending
2 mediation.

3 11. On July 25, 2023, Plaintiffs Wright and Gregory each submitted separate PAGA
4 notices of claims to the LWDA, alleging that Defendant failed to pay all minimum wages, overtime
5 wages, premium wages in lieu of late, short, or denied meal and rest periods, failed to pay all wages
6 due upon separation of employment, failed to furnish accurately itemized wage statements, and failed
7 to reimburse business expenses.

8 12. After further meeting and conferring, the Parties agreed to mediate the claims alleged
9 by Plaintiffs Wright and Gregory in their respective PAGA notices, as well as the claims alleged by
10 Plaintiff Mary Shellenbaum in her separate matter. The Parties further agreed to a protocol for
11 exchanging additional documents and information on all claims before the mediation. Through
12 this informal discovery, Defendant provided Plaintiffs with information including, inter alia, the
13 number of potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and
14 time records for a sampling of the allegedly Aggrieved Employees, employee handbooks and
15 manuals, and other policy documents regarding Defendant's time keeping and reporting policies.

16 13. The Parties then mediated the case with Lisa Klerman, Esq., a respected mediator
17 with extensive class action/wage and hour experience, in August 2023. Before and during the
18 mediation, Plaintiffs and their counsel analyzed, researched, and investigated the potential issues,
19 including matters related to the calculation of damages, trial, and appellate issues and risks.
20 During mediation, the Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on
21 a representative basis as to the PAGA claims, the legal grounds for Plaintiffs' claims and
22 Defendant's defenses, and the parties' data analyses and conclusions based on data provided by
23 Defendant. After a contentious full day of negotiations, the Parties reached agreement on all major
24 issues and subsequently formalized their tentative settlement in the Settlement Agreement now
25 before the Court for approval. Additionally, Plaintiffs have filed an amended complaint combining
26 all Plaintiffs and all claims into this matter in order to effectuate a complete global settlement.

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1 **SUMMARY OF SETTLEMENT TERMS**

2 14. Under the settlement, Defendant will pay a non-reversionary settlement amount of
3 \$1,170,000 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive of payments to the
4 LWDA and Aggrieved Employees, costs of settlement administration, service awards to the
5 Plaintiffs, and reasonable attorney’s fees and costs.¹ After payment of settlement administration
6 costs, Plaintiffs’ service awards, and reasonable attorney’s fees and costs from the GSA, Plaintiffs
7 presently estimate about \$710,539 will remain (the “Net Settlement Amount” or “NSA”).
8 Seventy-five percent of the NSA (about \$532,904.25) will go to the LWDA, and the remaining
9 25% (about \$177,634.75) will be distributed to the Aggrieved Employees in proportion to the total
10 number of Pay Periods each individual worked during the PAGA Period. I estimate the average
11 award at about \$45.20 per Aggrieved Employee.

12 15. The Parties propose using ILYM Group, Inc. as the Settlement Administrator.
13 Atticus has extensive experience administering PAGA settlements, and has agreed to cap its fees
14 at \$19,500. CROSSMARK will fund the GSA within 30 days of the Effective Date, and within 15
15 days thereafter ILYM will mail a Notice and settlement check to all Aggrieved Employees via
16 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
17 Defendant’s records. Aggrieved Employees need not submit claim forms and will automatically
18 receive a Notice and settlement check. Checks will be negotiable for 180 days, after which time
19 any unclaimed residual funds will be forwarded to the California State Controller’s Unclaimed
20 Property Fund.

21 16. The California Supreme Court has explained that a judgment in “a representative
22 action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of
23 2004 ... is binding not only on the named employee plaintiff but also on government agencies and
24 any aggrieved employee not a party to the proceeding.” Arias v. Superior Court (2009) 46 Cal.4th
25 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil
26 penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is
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28 ¹ Plaintiffs’ counsel requests fees of 33.33% of the GSA, or \$389,961.00 and costs in the amount of \$25,000, while
Plaintiffs request service awards of \$10,000.00 each (\$40,000.00 total)

1 intended to be “binding not only on the named employee plaintiff but also on government agencies
2 and any aggrieved employee not a party to the proceeding.” The Settlement Agreement protects
3 the rights of the Aggrieved Employees to bring their own individual claims should they wish. For
4 these reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged,
5 and the Settlement Agreement specifically provides the Release is inapplicable to any claims other
6 than those brought under PAGA.

7 **THE SETTLEMENT MEETS THE KULLAR/MONIZ FACTORS,**

8 17. First, Plaintiffs alleged Defendant failed to pay all minimum and overtime wages, as
9 per Plaintiffs CROSSMARK required employees to answer phone calls and read/respond to text
10 messages from supervisors outside of scheduled shift times to discuss work-related issues (i.e., whether
11 a display was properly set up in a grocery store, etc.). Plaintiffs estimate they and other employees
12 averaged 15 minutes per workweek on these “off the clock” communications with supervisors.

13 18. As far as alleged meal break violations, Plaintiffs contend employees were required to
14 clock out for their meal periods when entering their personal vehicles to drive to another store location
15 and as a result received a meal break *while driving* to their next assignment. Further, Plaintiffs review
16 of the sample time records produced suggests numerous de facto violations for missed, untimely, or
17 short meal periods, and Plaintiffs allege around a 15% violation rate based on their expert’s analysis.
18 Plaintiffs similarly allege numerous “de facto” violations for rest breaks, and argued that due to the
19 nature of the job duties employees could not simply stop work and take a rest period but had to continue
20 working to be able to meet certain expectations on a timely basis.

21 19. Plaintiffs next alleged CROSSMARK failed to reimburse necessary business
22 expenses such as personal cell phones, as supervisors would contact Plaintiffs and other employees
23 on their personal phones regarding work-related issues.

24 20. Plaintiffs further allege Defendant’s wage statements fail to provide an accurate
25 overtime rate, in violation of Labor Code section 226(a)(9), as wage statements break overtime pay
26 into two separate overtime line items (OVT 0.5x and OVT 1.0x), with neither one accurately
27 reflecting the actual rate. Per Plaintiffs, these wage statements are nearly identical to those found
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1 non-compliant in McKenzie v. Fed. Express Corp. (C.D. Cal. 2011) 765 F. Supp.2d 1222, 2336,
2 where the subject wage statements similarly divided overtime pay into multiple line items that did
3 not correctly reflect the true premium for overtime. Plaintiffs also allege the wage statements failed
4 to provide required information regarding available sick pay per Labor Code section 246(i).

5 21. Lastly, Plaintiffs also allege derivative wage statement claims based on the failure to
6 pay all wages due, and derivative claims for failure to pay all wages due and owing upon separation
7 of employment under Labor Code §§ 201-203.

8 22. For mediation, CROSSMARK indicated it employed approximately 3,930 non-
9 exempt employees in California during the applicable PAGA period, and these individuals worked
10 approximately 159,859 pay periods during that time. Based on the data and information provided
11 by Defendant, Plaintiffs estimated Defendant's maximum PAGA exposure at approximately \$72
12 million.

13 23. We estimated these amounts as follows:

14 **Unpaid Wage Claims**

15 159,859 pay periods * 100% violation rate * \$100/violations = \$15,985,900

16 **Meal Period Violation Claims**

17 159,859 pay periods * 52.5% violation rate * \$100/violations = \$8,392,600

18 **Rest Period Violation Claims**

19 159,859 pay periods * 96.3% violation rate * \$100/violations = \$15,394,400

20 **Expense Reimbursement Claims**

21 159,859 pay periods * 100% violation rate * \$100/violations = \$15,985,900

22 **Wage Statement Claims**

23 159,859 pay periods * 100% violation rate * \$100/violations = \$15,985,900

24 **Final Wage Violations**

25 2,567 terminated employees * \$100/violation = \$256,700

26 24. In response to Plaintiffs' unpaid wage claims for alleged "off the clock work,"
27 Defendant took the position that its time keeping policies are legally compliant, that it accurately
28 tracked all hours worked, that employees were required by company policy to accurately track the

1 exact shift start/end times and are prohibited from working off the clock, and that it paid the
2 Aggrieved Employees for all hours worked consistent with those policies. Defendant further
3 emphasized to the extent any off the clock work such as phone calls or texts, may have happened, it
4 was intermittent, against company policy, and done without company authorization or knowledge.

5 25. For the meal and rest break claims, CROSSMARK offered multiple defenses. First,
6 it emphasized its written meal and rest break policy generally was compliant, that it authorized and
7 permitted all necessary breaks, and that employees received full uninterrupted lunch periods free
8 from employer control and that employees were never compelled to take lunch break while driving
9 between job assignments. Defendant also asserted that even to the extent any late or short meal
10 periods occurred, it was in violation of company policy and aberrational, and would require
11 significant individual inquiries to determine the reasons underlying any such alleged violations and
12 whether it was by employee choice or some other reason.

13 26. As with meal breaks, Defendant argued the applicable rest break policies complied
14 with California law, and that it authorized and permitted employees to take all required breaks.
15 Defendant further contended that, in light of the fact that it is not required to maintain a record of
16 rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking
17 rest periods would be purely anecdotal and individual issues would predominate on liability. This
18 arguably would once again make a trial unmanageable since the number of instances an employee
19 missed a rest break would have to be tested on a case by case basis to determine compliance.

20 27. For the expense reimbursement claim, CROSSMARK countered there typically
21 would be no need for employees to communicate via phone or text while performing their job
22 duties at the various stores they serviced. Per Defendant, to the extent Plaintiffs or other
23 Aggrieved Employees used their individual phones for work purposes, it was done purely for
24 personal convenience and was neither required nor necessary in order to perform their job duties.
25 Thus, per Defendant, no reimbursement was required.

26 28. On the alleged wage statement violations, Defendant contended its wage statements
27 are fully compliant and employees can discern all required information from the face of a wage
28 statement. Plaintiffs also alleged derivative wage statement violations and derivative Labor Code

1 §§ 201-203 (waiting time penalties). Such derivative claims will rise or fall along with the primary
2 claims for unpaid wages and are subject to the same merits defenses, in addition to being subject
3 to “good faith” and other defenses available to Defendant. Accordingly, Plaintiffs discounted the
4 value of this claim significantly in light of these multiple potential defenses. Defendant also
5 contended a substantial discount should be applied to the civil penalties for these derivative (i.e.,
6 “stacked”) violations, as it would be unfair to penalize Defendant multiple times for the same
7 violation.

8 29. Defendant also emphasized PAGA gives the Court wide latitude to reduce the
9 amount of civil penalties “based on the facts and circumstances of a particular case” if “to do
10 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor
11 Code § 2699(h). I am aware that several state and federal courts in California have applied
12 significant reductions to PAGA civil penalties even after plaintiff prevailed on the merits.

13 30. Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs’
14 claims, anyone of which, if successful, could have decimated Plaintiffs’ case. And Defendant
15 vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward
16 with this litigation, and it could have taken years to realize any recovery in this action along with
17 the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
18 unmanageable, Defendant also intended to raise additional defenses on damages, including the
19 proper measure of civil penalties and the appropriate discount to place on any assessment of such
20 penalties.

21 31. Although Plaintiffs and their counsel believe they could have prevailed, there was
22 no such guarantee. When the risks of overcoming Defendant’s multiple defenses and prevailing at
23 trial on the merits on all claims, and securing 100% of the theoretical civil penalties, all are
24 factored into the equation, the settlement value is reasonable and supported. Of course, to recover
25 anywhere near the maximum penalties Plaintiffs would have to shoot the moon and win both
26 liability and maximum penalties on all claims, which outcome, for the reasons discussed, is
27 unlikely. Given Defendant’s various procedural and merits defenses, as well as the substantial
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1 penalty reductions ordered in the cases above – which occurred after trial – the proposed
2 settlement is eminently reasonable.

3 **SUBMISSION TO THE LWDA**

4 32. Plaintiffs timely served the LWDA with the Settlement Agreement and this
5 Motion, and notified the LWDA of this approval hearing. Accordingly, the LWDA will be able to
6 weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA
7 ultimately declines to offer any comment or objection to a proposed PAGA settlement.

8 **THE REQUESTED ATTORNEY’S FEES AND COSTS ARE FAIR AND REASONABLE**

9 33. Under the terms of the Settlement Agreement, I respectfully request an award of
10 attorney’s fees to my office equal to 1/3 of the PAGA Allocation, or \$389,961.00. A one-third
11 common fund attorney fee award is consistent with what courts have awarded Plaintiffs’ counsel in
12 other representative actions. Awarding attorney’s fees of one-third of a gross settlement amount is
13 favored by California courts when a fund established for the common benefit of others is involved,
14 such as here.

15 34. There are several additional factors why I believe that the Court should award one-
16 third of the common fund as a reasonable attorney’s fee. First, our efforts and those of co-counsel
17 resulted in a common fund settlement amount of \$1,170,000.00, which for the reasons explained,
18 is fair and reasonable in light of the risks/defenses Defendant raised in litigation and threatened to
19 raise at trial, in the current appeal, and in post-trial appeals. Further, this is a significant sum that
20 furthers the purposes underlying PAGA such as augmenting the state's enforcement capabilities,
21 encouraging compliance with Labor Code provisions, and deterring future non-compliance.
22 Moreover, this result was achieved by the work and success of this office and our co-counsel, who
23 negotiated the settlement after extensive preparation, informal discovery, and an adversarial
24 mediation.

25 35. Second, Plaintiffs faced significant risks going forward with the litigation. As
26 discussed above, Defendant raised various defenses to their claims, anyone of which, if successful,
27 could have decimated Plaintiffs’ case. Plaintiffs faced risky legal issues going forward with this
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1 litigation, and it would have taken several more years to realize any recovery in this action along
2 with the possibility of post-trial appeals,

3 36. Third, we are experienced class and representative action litigators, as are our co-
4 counsel, and have achieved several approved PAGA settlements. This experience and expertise,
5 combined with the high quality of work performed, resulted in the settlement achieved in this case.

6 37. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
7 has approximately thirteen years of experience as a practicing attorney. For nearly his entire
8 career, his practice has focused on litigation of wage & hour, consumer, and privacy class action
9 and representative action claims. Following graduation he immediately began working for a
10 nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked directly
11 with past presidents of the consumer attorneys and recipients of trial attorneys of the year
12 awards. He also worked for other firms that included former CAALA and CLAY trial attorney
13 of the year recipients. While with these firms, he advocated for the rights of consumers and
14 employees in class action litigation, civil rights and employment litigation, catastrophic injuries,
15 insurance bad faith and appellate litigation.

16 38. In 2013, he founded the law firm of Crosner Legal, P.C. which since its inception
17 has focused almost exclusively on plaintiff-side class actions lawsuits representing employees,
18 consumers and other victims. Currently, over ninety percent (95%) of his practice is dedicated
19 exclusively to the prosecution of class actions and representative action lawsuits, and his law
20 firm is currently responsible as lead counsel or co-lead counsel for prosecuting over one hundred
21 (100) active wage and hour class actions and/or PAGA representative actions, as well as a
22 multitude of consumer and privacy class actions, in both federal and state courts throughout
23 California. He has been a direct participant in over one hundred (100) class action and/or
24 representative action settlements where he has been approved as adequate lead counsel.

25 39. Mr. Crosner has been selected by Super Lawyers as a "Southern California Rising
26 Star" for employment and labor law consecutively from 2018 through 2023. Super Lawyers has
27 also named me on their "Up-and-Coming 100" Southern California Rising Stars List for
28 consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are named a

1 Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he has been
2 selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers, invitation-
3 only organization composed of the premier trial lawyers, from 2019 through 2023. He is an
4 active participant in advocacy groups, including as an executive board member of the Wage and
5 Hour Committee and the Legislative Committee for the California Employment Lawyers
6 Association; a member of the Grassroots Advocacy Team for the National Employment Lawyers
7 Association; Wage and Hour Committee member and Class Action Committee member for the
8 National Trial Lawyers; a member of the American Association for Justice; and a member of the
9 Pound Civil Justice Institute.

10 40. Jamie Serb is a partner with Crosner Legal and head of the firm's Wage and Hour
11 Practice Group. She graduated from the University of California, San Diego in 2004, graduated from
12 California Western School of Law in 2013, and has been a member of the California Bar since 2013.
13 She has extensive experience in wage and hour litigation, beginning work as a class action attorney
14 in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley Law Firm,
15 APLC) until joining Crosner Legal in January 2021. She has handled wage and hour class actions
16 and PAGA lawsuits almost exclusively for past nine years and has recovered millions of dollars for
17 California employees during that time.

18 41. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her
19 law degree from George Washington University in 2007. She has been affiliated with my firm since
20 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost
21 exclusively on wage and hour class and representative actions. She has spent her entire career
22 representing plaintiffs in employment litigation, including several years as an associate at well-
23 known plaintiff's firm Carlin & Buchsbaum.

24 42. J. Kirk Donnelly is a 1989 graduate of the College of William and Mary, and a
25 1995 graduate *cum laude* of the University of San Diego School of Law, where he was selected to
26 the Order of the Coif and the Order of Barristers. Prior to 2003, he was a litigation associate with
27 Ross Dixon & Bell, LLP (now Troutman Pepper LLP), in Orange County, California, where his
28 practice focused on complex business, employment, and insurance coverage disputes. In 2003, he

1 became associated with Dostart Clapp & Coveney, LLP, then one of the premiere plaintiffs' wage
2 and hour class action firms in California. In 2008, he founded the Law Offices of J. Kirk
3 Donnelly, APC and, in January 2019 also became Of Counsel to Crosner Legal, P.C. Since 2003,
4 his practice has focused on representing plaintiffs in wage and hour and consumer law matters,
5 including both class actions and individual matters. He has served as class/lead counsel in over 50
6 wage and hour class and PAGA actions.

7 43. Kim Anglin obtained her B.A. from U.C. Davis in 1995, and her J.D. from
8 American University in 1999. She has been practicing law for over twenty years, and has been
9 specializing in advocating on behalf of employees for over 15 years, litigating both individual
10 discrimination cases and large-scale wage & hour class actions. She maintained her own solo
11 practice for 10 years focused on employment litigation, and went on thereafter to open and
12 manage employment law departments with multiple attorneys working under her for two
13 personal injury firms. She has certified wage & hour class actions, and successfully resolved
14 many class, PAGA and individual discrimination cases, including through jury verdict.

15 44. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
16 action settlements while serving as lead class counsel in recent years, including but not limited
17 to a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North*
18 *America, Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class
19 action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-
20 00190252 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement
21 in 2017 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty.
22 Super. Ct.)), a \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H.*
23 *Enterprises, Inc. dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3
24 million wage and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case
25 No. 17-CV-2160 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020
26 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego
27 Cty. Super. Ct.)), a \$1.15 million wage and hour class action settlement in 2020 (*Buford v.*
28 *Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and

1 hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case
2 No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action
3 settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los
4 Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v.*
5 *The Original Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty.
6 Super. Ct.)); a \$1 million wage and hour class action settlement in 2022 (*Duong v. Loan*
7 *Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and
8 hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No.
9 CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and hour class action
10 settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los
11 Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement in 2023 in *Jajuga*
12 *v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015
13 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case
14 No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and hour PAGA
15 settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
16 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action
17 settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super.
18 Court); and a \$1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*,
19 Case No. 20STCV06618 (Los Angeles Cty. Super. Court).

20 45. Based upon the qualifications and experience set forth above, I believe the
21 following hourly rates are reasonable: Zach Crosner and Kim Anglin \$800/hr, Jamie Serb \$750/hr,
22 Brenden Hamilton \$600/hr; J. Kirk Donnelly \$900/hr, and Sepideh Ardestani \$700/hr.

23 46. I request the Court apply the above hourly billing rates in this case, as it reasonable
24 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
25 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour
26 class action firms in major California legal markets for partner-level attorneys with experience
27 comparable to mine. These rates have ranged from \$750 to \$900 per hour for calendar years
28 2018-2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los

1 Angeles, with 28 years of experience, \$900/hour (2023), Matthew Matern of Matern Law Group
2 in Los Angeles, with approximately 26 years of experience \$850/hour (2018); Craig Ackermann
3 of Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience \$850/hour
4 (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and
5 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of Crosner Legal PC
6 in Los Angeles, 13 years of experience \$750/hour (2022), and James Kawahito of Kawahito Law
7 Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

8 47. The requested rates also comport with the adjusted Laffey Matrix, which provides
9 that reasonable hourly rates for attorneys with 10+ years of experience, such as myself, Mr.
10 Crosner, and Ms. Serb, are over \$800/hour, and the rate for attorneys with 20+ years of experience
11 such as Mr. Donnelly, are nearly \$1,000/hour. The adjusted Laffey Matrix may be found at
12 <http://www.laffeymatrix.com/sec.html>.

13 48. Fourth, Crosner Legal has been representing Plaintiffs (and the State of California)
14 in this matter on a strictly contingent basis and as such, had to forego other financial opportunities
15 to litigate other cases, incurred the risk of non-recovery after a substantial investment of time,
16 money, and resources, and have done so since the inception of this case without any payment or
17 compensation. This is not an easy burden for a small firm. If, despite these hardships and risks, the
18 best this office could hope for is merely to be paid our customary hourly rate multiplied by the
19 number of hours worked on the case, then we would not be compensated for the hardships and
20 serious risks it faced litigating this contingency case, and would not be incentivized to take on
21 similar private attorney general cases in the future.

22 49. Fifth, the request for attorney's fees in the amount of one-third of the common fund
23 falls well within the norms accepted by state and federal courts in California in comparable wage
24 and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery
25 under the common fund doctrine was recently approved by the California Supreme Court in
26 Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480. For all of the above reasons, a common
27 fund fee award here in the amount of one-third of the \$1,170,000 common fund, or \$389,961, is
28 fair and reasonable.

1 50. Crosner Legal expended a total of 260.2 attorney hours on this matter, and
2 accordingly the firm's lodestar totals approximately \$192,142.50, exclusive of time for attending
3 the hearing on the approval motion and to be incurred to implement and administer the settlement.
4 The aggregated lodestar is summarized in Exhibit 8 hereto. When combined with the lodestars of
5 co-counsel and the appellate attorneys, Plaintiffs' counsels' total lodestar is \$358,528.00, based on
6 a total of 475.8 attorney hours. On a lodestar basis, the requested fees result in a modest lodestar
7 enhancement of 1.09, which I submit is entirely in line with California law.

8 51. As noted, Crosner Legal has represented Plaintiffs Sgontz, Gregory, and Wright for
9 some four years with respect to this matter and has expended a significant amount of time and
10 resources in that representation. We agreed to litigate this case on a purely contingent basis and in
11 so doing assumed considerable risk of non-payment for its fees and costs, as discussed above, and
12 as is the case with these matters in general. Under all relevant factors (as outlined herein and in
13 the accompanying memorandum, and in co-counsels' declarations), I respectfully request the
14 Court award the requested fees of \$389,961 based on the common fund theory with a
15 corresponding lodestar cross-check and a modest 1.09 lodestar enhancement. As reflected in the
16 Settlement Agreement, Crosner Legal and the Blumenthal firm will share in any fee award 50/50,
17 and appellate counsel already has been paid and will not receive a share of the fees.

18 52. I also request reimbursement of Crosner Legal's actual out-of-pocket expenses
19 incurred to prosecute this action. These expenses were incidental and necessary to the effective
20 representation of the employees.

21 53. Crosner Legal's costs are \$21,065.85, including court filing/service of process fees,
22 mediation fees, expert fees, and postage. Notably, the requested costs do not include any and all
23 printing and research charges. A true and correct itemization of the costs and expenses incurred is
24 set forth below:

25

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	\$2,401.69
Mediation Fees	\$10,000.00

1		
2	Expert Fees	\$8,325.00
3	PAGA Filing Fees	\$225.00
4	Postage	\$114.16
5	Total Costs and Expenses	
6		\$21,065.85

7
8 54. Combined with the Blumenthal firm's costs of \$3,955.44, Plaintiffs' counsels' total
9 costs are \$25,021.29. These costs are reasonable and uncontested, and should be approved up to the
10 cap of \$25,000.00.

11 **THE PROPOSED SERVICE AWARDS ARE FAIR AND REASONABLE**

12 55. Under the Settlement Agreement, Plaintiffs seek incentive awards of \$10,000 each,
13 for a total of \$40,000. These requests are reasonable given the much broader release each Plaintiff
14 is agreeing to, as well as for their efforts in this case and the risks they undertook on behalf of the
15 Aggrieved Employees. Additionally, by contacting and retaining counsel to pursue these claims,
16 Plaintiffs made this settlement possible for the other Aggrieved Employees and the LWDA, while
17 shouldering the risk of being liable for Defendant's litigation costs. Plaintiffs also exposed
18 themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a
19 simple google search) for the benefit of other employees, placing them at risk of discrimination by
20 future prospective employers. Among taking many other actions assisting in the successful litigation
21 of this case, Plaintiffs provided substantial factual information to counsel, attended numerous
22 meetings with my office to discuss the case, and generally participated in all phases of the litigation.
23 Accordingly, the requested enhancement payments to Plaintiffs are appropriate and justified as part
24 of the Settlement.

25 ////

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28 ////

1 56. For the foregoing reasons, it is respectfully requested that the Court approve the
2 settlement.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed on May 1, 2024, at Los Angeles, California.

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6 _____

7 Declarant
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EXHIBIT

1

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement and Release (the “Agreement”) is made by and between Wendy Sgontz (“Sgontz”), Vicky Wright (“Wright”), Nicole Gregory (“Gregory”), and Jennifer Shellenbaum (“Shellenbaum”) (collectively, “Plaintiffs”), on behalf of themselves and each of the other alleged “Aggrieved Employees,” as defined herein, on the one hand, and CROSSMARK, Inc. (“CROSSMARK”), on the other hand, and sets forth the basic terms agreed to by the Parties (defined below) to settle and resolve the Actions (defined below) and the Sgontz Individual Action (defined below).

1. DEFINED TERMS

In addition to the defined terms referenced above, as used herein, the following terms are defined as:

1.1 The term “Aggrieved Employees” means all current and former employees of CROSSMARK or a subsidiary or affiliate of CROSSMARK who were or are employed in the State of California and worked or performed services for CROSSMARK as hourly or non-exempt employees during the Settlement Period.

1.2 The term “Actions” means the lawsuit captioned, *Wendy Sgontz v. CROSSMARK, Inc.*, pending in the Superior Court of Orange County, California, Case No. 30-2021-01204377-CU-OE-CXC (the “Sgontz Lawsuit”), the PAGA letter submitted by Nicole Gregory to the LWDA, No. LWDA-CM-970891-23 (the “Gregory PAGA Letter”), the PAGA letter submitted by Vicky Wright to the LWDA, No. LWDA-CM-970986-23 (the “Wright PAGA Letter”), and the lawsuit captioned, *Jennifer Shellenbaum v. CROSSMARK, Inc. and CHI Management Group, LP*, pending in the Superior Court of Orange County, California, Case No. 30-2021-01232903-CU-OE-CXC (the “Shellenbaum Lawsuit”).

1.3 The term “Attorneys’ Fees and Cost Award” means the amount authorized by the Court to be paid to Plaintiffs’ Counsel for the services they have rendered and expenses they have incurred in prosecuting the Actions.

1.4 The term “CROSSMARK” means CROSSMARK, Inc., and shall include CROSSMARK’s parent corporation, affiliates, subsidiaries and related corporations, as well as its divisions, predecessors, insurers, co-employers, successors, and assigns, and each of their current and former officers, directors, employees, attorneys, and agents.

1.5 The term “Court” as used herein means the Superior Court of Orange County.

1.6 The term “Effective Date” means the date on which the order of the Court granting approval of this Settlement becomes Final, where Final means (i) any appeals, review, or writ timely filed are finally resolved and not subject to any further proceedings, or (ii) if no appeals are timely filed, the expiration date of the time for filing or noticing any appeals from the Court's grant of final approval.

1.7 The term “Gross Settlement Amount” means an amount not to exceed One Million One Hundred Seventy Thousand Dollars and Zero Cents (\$1,170,000.00) that will be paid by CROSSMARK into the Qualified Settlement Fund to settle the Actions. The Gross Settlement Amount includes all Individual Settlement Payments, the Attorneys’ Fees and Cost Award, the Settlement Administration Costs, Enhancement Payments, and payment to Labor and Workforce Development Agency (“LWDA”).

1.8 The term “Individual Settlement Payment” means the amount to be paid to an Aggrieved Employee pursuant to Section 6 of this Agreement.

1.9 The term “Net Settlement Amount” means the funds from the Gross Settlement Amount available to be distributed to Aggrieved Employees under this Agreement after payment of the Attorneys’ Fees and Cost Award, the Settlement Administration Costs, the Enhancement Payment, and the portion of the PAGA Payment made to the LWDA.

1.10 The term “Operative Complaint” means the amended complaint to be filed in the Sgontz Lawsuit.

1.11 The term “PAGA Payment” means the net amount to be paid by the Settlement Administrator to the LWDA and Aggrieved Employees after deduction of Settlement Administration Costs, Enhancement Payments, and the Attorneys’ Fees and Costs Award from the Gross Settlement Amount, in full satisfaction of the Released Claims as defined below. This PAGA Payment is made pursuant to Labor Code §2699(i).

1.12 The term “Parties” means Plaintiffs and CROSSMARK.

1.13 The term “Pay Periods” means the aggregate number of pay periods worked by the Aggrieved Employees during the Settlement Period.

1.14 The term “Plaintiffs’ Counsel” means Zachary M. Crosner, Jamie K. Serb, and Sepideh Ardestani of Crosner Legal, PC and Blumenthal Nordrehaug Bhowmik De Blouw LLP.

1.15 The term “Qualified Settlement Fund” shall be the fund established and administered by the Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1 in connection with the Settlement.

1.16 The term “Enhancement Payment” means the amount the Court authorizes to be paid to Sgontz, Gregory, Wright and Shellenbaum in recognition of their effort and work in prosecuting the Actions on behalf of the Aggrieved Employees, and for their general release of claims, not to exceed \$10,000 individually for each.

1.17 The term “Settlement” means the settlement described in this Agreement.

1.18 The term “Settlement Administration Costs” means all Settlement Administrator fees and costs incurred in administering the Settlement.

1.19 The term “Settlement Administrator” means ILYM Group, Inc., the firm that the Parties mutually agree shall be responsible for the administration of the Settlement, pursuant to the terms of this Agreement.

1.20 The term “Settlement Period” means the period beginning December 8, 2019 through December 1, 2023,.

2. SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT

2.1 As detailed below, this Agreement establishes a procedure to resolve all Aggrieved Employees’ claims for penalties, attorneys’ fees, costs, and interest under PAGA that were alleged or which could have been alleged based on the factual allegations in the Actions, including the Operative Complaint, directly or indirectly. The Parties believe that continued litigation would be protracted, expensive, uncertain, and contrary to their best interests. In light of these realities, the Parties believe that this Settlement is the best way to resolve the disputes between them.

2.2 The Parties believe this Agreement constitutes a fair, adequate, and reasonable settlement of the Actions and have arrived at this Agreement in arms-length negotiations, following a mediation before well-respected mediator, Lisa Klerman, taking into account all relevant factors, present and potential, and will so represent to the Court. This Settlement was reached after extensive informal and formal discovery and negotiations. In addition, the Parties have conducted significant investigation of the facts and law during the prosecution of this Actions. The Parties have also investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and potential defenses thereto, and the civil penalties claimed by Plaintiffs.

3. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this dispute. The Actions include claims that, while CROSSMARK denies them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the Court will retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

4. STATEMENT OF NO ADMISSION

4.1 The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Actions, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. This Agreement does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission of liability by CROSSMARK as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Actions.

4.2 Neither this Agreement, nor any action taken or made in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to the Agreement, is intended by the Parties (nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding) as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding that has as its purpose the interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the Court entered into in connection therewith.

4.3 Evidence produced or created by the Parties in connection with the Settlement procedure do not constitute, are not intended to constitute, and will not be deemed to constitute, an admission by CROSSMARK of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

4.4 In the event that this Settlement is not approved by the Court, is terminated, or otherwise fails to be enforceable, CROSSMARK will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Actions.

5. WAIVER, RELEASE, AND DISMISSAL

5.1 Release and Waiver of Claims by the LWDA and Aggrieved Employees. As of the Effective Date, the LWDA, all Aggrieved Employees, including Plaintiffs, and their successors, assigns, and/or agents, and the LWDA, shall be deemed to have fully and finally released and forever discharged CROSSMARK, CHI Management Group, LP, CHI Management Group, LLC, Sam's West, Inc., WellPath Management, Inc., Walmart Inc., CVS Health Corporation, CVS Pharmacy, Inc., Target Corporation, Target Brands, Inc., Rite Aid Corporation, The Kroger Co., Albertsons Companies, Inc., and each of their past, present, and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of their respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them (collectively, the "Released Parties"), from the "PAGA Released Claims." For purposes of this Agreement, the "PAGA Released Claims" constitute any and all claims, debts, liabilities, demands, actions, or causes of action for civil penalties that were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, as amended, that occurred during the Settlement Period, including all claims for civil penalties for Released Parties' alleged failure to pay all wages due, including minimum wages, overtime wages and regular wages; failure to pay for all hours worked; off-the-clock work; failure to pay overtime compensation at the regular rate of pay; failure to pay meal and/or rest period penalties at the regular rate of pay; the calculation of the regular rate of pay; failure to provide meal and/or rest periods; failure to pay proper meal or rest period penalties; refusal to make and/or falsely denied payments due; failure to provide paid sick days; failure to pay sick pay at the regular rate of pay; failure to place employees on notice of their workplace

rights, including paid sick leave rights; failure to maintain accurate records documenting the hours worked and paid sick days accrued and used; unlawfully retaining paid sick leave; failure to keep accurate and complete time records; rounding; failure to provide and maintain accurate itemized wage statements; unlawful deductions; failure to keep accurate employee payroll records; failure to timely pay wages during employment; failure to timely pay wages at separation of employment; failure to reimburse business expenses; failure to provide suitable seating; unlawful non-compete and/or non-solicitation agreements; misclassification; unlawful criminal and/or financial background checks as a condition of hire and/or continued employment; unlawful request to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment or otherwise impermissible inquired into employee criminal history on employment applications; requirement that employees agree in writing to terms or conditions that violate the law as a condition of employment; failure to provide a safe and healthful place of employment; waiting-time penalties; and claims based on the facts of the Operative Complaint for alleged violations of California Labor Code Sections 201-204, 208, 210, 216, 218.5, 218.6, 221-223, 225.5, 226, 226.3, 226.6, 226.7, 226.8, 227.3, 233, 234, 245-248.6, 256, 351, 432, 432.5, 432.7, 510, 511, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198-1199, 1198.5, 2350, 2802, 2804, 2810.5, 2698 *et seq.*, 6400-6404, 6406-6407, 6409.6, 6432, for alleged violations of California Code of Regulations, title 9, sections 1527, 3203, 3364, 3365, 3366, 3457, and 8397.4, and applicable California Industrial Welfare Commission (“IWC”) Wage Orders during the Settlement Period, against the Released Parties.

5.2 Plaintiffs’ Release. As of the Effective Date, Plaintiffs fully and finally release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to their employment with CROSSMARK and compensation while an employee of CROSSMARK (“Plaintiffs’ Released Claims”). Plaintiffs’ Released Claims include, but are not limited to, all claims arising from or reasonably related to the Actions, whether plead or not plead, and, additionally, as to Sgontz, all claims arising from or reasonably related to the Sgontz Individual Action, whether plead or not plead. Plaintiffs’ Released Claims also include all claims for failure to pay all wages due, including minimum wages, overtime wages and regular wages; failure to pay for all hours worked; off-the-clock work; failure to pay overtime compensation at the regular rate of pay; failure to pay meal and/or rest period penalties at the regular rate of pay; the calculation of the regular rate of pay; failure to provide meal and/or rest periods; failure to pay proper meal or rest period penalties; refusal to make and/or falsely denied payments due; failure to provide paid sick days; failure to pay sick pay at the regular rate of pay; failure to place employees on notice of their workplace rights, including paid sick leave rights; failure to maintain accurate records documenting the hours worked and paid sick days accrued and used; unlawfully retaining paid sick leave; failure to keep accurate and complete time records; rounding; failure to provide and maintain accurate itemized wage statements; unlawful deductions; failure to keep accurate employee payroll records; failure to timely pay wages during employment; failure to timely pay wages at separation of employment; failure to reimburse business expenses; failure to provide suitable seating; unlawful non-compete and/or non-solicitation agreements; misclassification; unlawful criminal and/or financial background checks as a condition of hire and/or continued employment; unlawful request to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment or otherwise impermissible inquired into employee criminal history on employment applications; requirement

that employees agree in writing to terms or conditions that violate the law as a condition of employment; failure to provide a safe and healthful place of employment; waiting-time penalties; and claims arising under or based upon the alleged violations of California Labor Code (including, but not limited to, sections 201-204, 208, 210, 216, 218.5, 218.6, 221-223, 225.5, 226, 226.3, 226.6, 226.7, 226.8, 227.3, 233, 234, 245-248.6, 256, 351, 432, 432.5, 432.7, 510, 511, 512, 516, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198-1199, 1198.5, 2350, 2802, 2804, 2810.5, 2698 *et seq.*, 6400-6404, 6406-6407, 6409.6, 6432); all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (“PAGA”); California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 8 CCR § 11010; 8 CCR § 11040; California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201, *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”). Plaintiffs’ Released Claims also include all claims for lost wages and benefits, emotional distress, retaliation, discrimination, harassment, punitive damages, and attorneys’ fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act; and the law of contract and tort. This release excludes the release of claims not permitted by law. Plaintiffs’ general release does not extend to any claims or actions to enforce this Agreement, or to any claims for, unemployment benefits, social security benefits, or workers’ compensation benefits that arose at any time.

Plaintiffs’ Released Claims include all claims, whether known or unknown. Even if Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of Plaintiffs’ Released Claims, those claims will remain released and forever barred. Thus, Plaintiffs expressly waive and relinquish the provisions, rights and benefits of Section 1542 of the California Civil Code, which reads: **“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

Furthermore, this Agreement constitutes a knowing and voluntary waiver of any and all rights or claims that Plaintiffs have or may have under the Federal Age Discrimination In Employment Act, as amended by the Older Workers' Benefit Protection Act of 1990, 29 U.S.C. §§ 621 *et seq.* This paragraph and this Agreement are written in a manner calculated to be understood by Plaintiffs. Plaintiffs are hereby advised in writing to consult with an attorney before signing this Agreement. Plaintiffs have had a reasonable time of up to 21 days in which to consider signing this Agreement. If Plaintiffs decide not to use all 21 days, Plaintiffs knowingly and voluntarily waive any claims that Plaintiffs were not given the 21-day period or did not use the entire 21 days to consider this Agreement. Plaintiffs may revoke this Agreement at any time within the 7-day period following the date Plaintiffs sign this Agreement by providing written notice of revocation to CROSSMARK’s counsel of record. The Agreement shall not become effective or enforceable until after this 7-day revocation period has expired. If Plaintiffs revoke the Agreement, Plaintiffs will not receive the consideration set forth in the Agreement.

6. COMPUTATION AND DISTRIBUTION OF PAYMENTS

6.1 Gross Settlement Amount. The Gross Settlement Amount of One Million One Hundred Seventy Thousand Dollars and Zero Cents (\$1,170,000.00) is on an all-in, non-reversionary basis to settle the Actions and to resolve all released claims, penalties, attorneys' fees, costs, administrative fees, and interest in connection with the Actions. In no event shall CROSSMARK be liable for more than One Million One Hundred Seventy Thousand Dollars and Zero Cents (\$1,170,000.00) as a result of this Settlement, and any of the attorneys' fees, costs, administrative fees, penalties, and sums specified in this Agreement shall be paid from this amount, except as otherwise noted in this Agreement. This Gross Settlement Amount of One Million One Hundred Seventy Thousand Dollars and Zero Cents (\$1,170,000.00) has been agreed to by Plaintiffs and CROSSMARK. It is expressly understood that if the Court awards less than the total amounts requested by Plaintiffs' Counsel to be awarded for attorneys' fees and costs and/or service awards requested by Plaintiffs, the difference in any such amounts will be included in the PAGA Payment.

6.2 Deposit of the Gross Settlement Amount into the Qualified Settlement Fund. Not later than thirty (30) days following the Effective Date, CROSSMARK shall deposit the Gross Settlement Amount into the Qualified Settlement Fund. At no time will CROSSMARK have any obligation to make that deposit or otherwise fund the Settlement, in whole or in part, until after the Effective Date. All payments that that are required to be made pursuant to the Agreement shall be made from the Qualified Settlement Fund.

6.3 Distribution Formula. The Settlement Administrator shall distribute the PAGA Payment to the LWDA and Aggrieved Employees as described in this Section 6.3.

Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Payment will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees.

The net amount of the Aggrieved Employees' share of the PAGA Payment shall be paid pro rata to all Aggrieved Employees based on the number of Pay Periods worked.

No Aggrieved Employee shall be required to file a claim in order to receive such payment.

For tax purposes, all Individual Settlement Payments will constitute penalties and will be reported on an IRS Form-1099, which the Settlement Administrator will provide to Aggrieved Employees, if necessary, as required by law. No person or entity shall have any claim against CROSSMARK, CROSSMARK's counsel, Plaintiffs, any Aggrieved Employees, Plaintiffs' Counsel, or the Settlement Administrator based upon distributions and payments made in accordance with this Agreement.

6.4 Distribution to the Aggrieved Employees. Individual Settlement Payments shall be paid out of the Net Settlement Amount pursuant to the Distribution Formula set forth in Section 6.3 of this Agreement.

Not later than thirty (30) days following the Effective Date, CROSSMARK shall send a list of all Aggrieved Employees to the Settlement Administrator containing: (1) name; (2) last known home address; (3) number of pay periods as an Aggrieved Employee during the Settlement Period; and (4) social security number. This shall be known as the "Group List." CROSSMARK shall transmit the Group List in Excel or similar format, or other method as agreed to by the Parties in good faith as technology requires to transmit the data.

Not later than three (3) days following receipt of the Group List, the Settlement Administrator shall email the Parties confirming receipt of the Group List and stating the number of Aggrieved Employees and the number of Pay Periods included therein.

Not later than ten (10) days following receipt of the Group List, the Settlement Administrator shall cross-reference all the addresses provided in the Group List with the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

Not later than fifteen (15) days following receipt of the Gross Settlement Amount from CROSSMARK, the Settlement Administrator shall make the following payments from those proceeds: (1) the Individual Settlement Payments; (2) the Enhancement Payments (which shall be delivered to Plaintiffs' Counsel); (3) the Attorneys' Fees and Cost Award; (4) the portion of the PAGA Payment to the LWDA; and (5) payment to the Settlement Administrator for administration of the Settlement.

The Settlement Administrator shall mail via U.S. First Class mail each Individual Settlement Payment to each Aggrieved Employee's last known address with directions to the Postmaster to deliver the checks to any applicable forwarding address and to return all undeliverable checks to the Settlement Administrator. The date of the initial mailing of the check shall be conclusively determined according to the records of the Settlement Administrator.

A letter substantially in the form of Exhibit "A" hereto will be included in the mailing of each Aggrieved Employee's Individual Settlement Payment.

Individual Settlement Payments shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the uncashed funds shall escheat to the State of California Unclaimed Property Fund in the name of the Aggrieved Employee whose check went uncashed.

The Settlement Administrator's determination of eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement, shall be conclusive, final, and binding on all Aggrieved Employees, including Plaintiffs.

6.5 Enhancement Payments. Sgontz, Gregory, Wright, and Shellenbaum will request, and CROSSMARK will not oppose, an Enhancement Payment not to exceed Ten Thousand Dollars (\$10,000.00) to each of them for their time and effort in bringing and prosecuting the Actions and as compensation for the release of their individual claims, including their wage and

hour claims. The Parties agree that a decision by the Court to award Plaintiffs an amount less than the amount stated above shall not be a basis for Plaintiffs' Counsel to void this Agreement. The Settlement Administrator shall issue a Form 1099 for the Enhancement Payments. Any amounts awarded for an Enhancement Payment to Sgontz, Gregory, Wright, and Shellenbaum less than the amount listed above will result in the non-awarded funds being part of the Net Settlement Amount available for distribution to the Aggrieved Employees. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their respective payment and shall hold harmless the Released Parties from any claim or liability for taxes, penalties or interest arising as a result of the payment.

CROSSMARK makes no representations as to the tax treatment or legal effect of the payments called for herein, and Plaintiffs are not relying on any statement or representation by CROSSMARK in this regard. Plaintiffs understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payment described herein.

6.6 Attorneys' Fees and Costs. Plaintiffs' Counsel shall request, and CROSSMARK will not oppose, an award of attorneys' fees of up to 33.33% or Three Hundred Eighty-Nine Thousand Sixty-One Dollars and Zero Cents (\$389,961.00) of the Gross Settlement Amount, and litigations costs not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), subject to court approval. The attorneys' fees awarded by the Court shall be allocated 50% to Crosner Legal, PC and 50% to Blumenthal Nordrehaug Bhowmik De Blouw LLP. The litigations costs awarded by the Court shall be allocated based upon the Plaintiffs' Counsel's respective declarations as to litigation costs incurred. The Attorneys' Fees and Cost Award shall be binding on the Parties and shall not otherwise affect the validity of the Settlement. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs' Counsel reflecting the awarded attorneys' fees, costs and expenses. Should Plaintiffs and/or Plaintiffs' Counsel request a lesser amount for attorneys' fees than stated above and/or the Court approve a lesser amount, the difference shall be added to the Net Settlement Amount. In consideration of the Attorneys' Fees and Cost Award, Plaintiffs' Counsel waive all claims to any further attorneys' fees and expenses in connection with the litigation of the Actions. Plaintiffs, Plaintiffs' Counsel, and Aggrieved Employees shall assume full responsibility and liability for the payment of taxes due on such awards.

The Attorney's Fees and Cost Award shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, costs or expenses in the Actions incurred by any attorney on behalf of Plaintiffs and the Aggrieved Employees, and shall relieve the Released Parties and the Settlement Administrator of any other claims or liability to any other attorney or law firm for any attorneys' fees, costs and expenses to which any of them may claim to be entitled on behalf of Plaintiffs and/or the Aggrieved Employees.

6.7 Settlement Administrator. The settlement administrator will be paid the Settlement Administration Costs in an amount estimated not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), subject to court approval. Any amount not awarded for costs of administration to the Settlement Administrator will result in the non-awarded amount being made part of the PAGA Payment, available for distribution to the LWDA and the Aggrieved Employees. A Form 1099 shall be issued to the Settlement Administrator.

The Settlement Administrator shall calculate the portion of the PAGA Payment to be paid to the LWDA and the Individual Settlement Payments to be paid to the Aggrieved Employees in accordance with the terms and provisions of this Agreement; pay any applicable state and/or federal taxes; make payment to the LWDA and mail the Individual Settlement Payment checks to the Aggrieved Employees along with the letter substantially in the form of Exhibit “A,” attached hereto; resolve any disputes regarding the calculation or application of the formula for determining the Individual Settlement Payments; issue 1099 forms; calculate and disburse any Attorneys’ Fees and Cost Award, Enhancement Payments, and/or applicable taxes from the Gross Settlement Amount; and perform such other tasks necessary to effectuate the terms of this Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

Any disputes relating to the Settlement Administrator’s ability and need to perform its duties shall be referred to the Court.

6.8 Escalator Clause. It was estimated for purposes of mediation that there were approximately 159,859 pay periods for the period December 8, 2019 to September 1, 2023. This number would be expected to increase proportionately for the passage of time between September 1, 2023 and the date the Court enters an order approving the Settlement. If the pay periods as of the date the Court enters an order approving the Settlement exceeds the referenced pay periods by more than 10% (i.e., exceeds 175,845 pay periods), CROSSMARK, at its discretion, agrees to elect one of two possible options: (a) the first option is to increase the Gross Settlement Fund on a pro rata basis according to the number of additional compensable pay periods over 175,845 pay periods; or (b) the second option is that CROSSMARK may elect to close the Settlement Period before the date the pay periods exceed the 175,845 pay period limit. It is in CROSSMARK’s sole discretion whether to choose option (a) or (b) as set forth herein.

7. INTEREST

7.1 The Gross Settlement Amount includes any and all interest accruals and no additional interest shall be due under any circumstances.

8. TAXATION

8.1 Plaintiffs and, through Plaintiffs’ Counsel, Aggrieved Employees represent and warrant that they understand that it is their sole obligation to pay appropriate federal, state, and local income taxes on any amounts they receive under this Agreement that lawfully qualify as taxable income.

8.2 Neither the Parties nor their respective counsel provide or purport to provide any tax advice to the Aggrieved Employees in connection with this Agreement or otherwise. The Parties agree that they shall not rely upon any terms of this Agreement for the purpose of determining or avoiding federal, state, or local tax obligations.

9. COURT'S APPROVAL

9.1 The Parties agree that no later than 10 calendar days after the signing of the long-form settlement agreement, Sgontz will amend her PAGA letter as necessary to comport with the Release and Waiver of Claims by Aggrieved Employees defined herein. Further, Sgontz will file with the Court a First Amended Complaint (the "Operative Complaint") in the Sgontz Lawsuit which includes Gregory, Wright, and Shellenbaum as named plaintiffs and includes all claims, rights, demands, liabilities, and causes of action set forth in the Release and Waiver of Claims by Aggrieved Employees defined herein, which is intended to include all claims alleged in the Sgontz Lawsuit, the Shellenbaum Lawsuit, the Gregory PAGA Letter, and the Wright PAGA Letter.

9.2 The Parties agree that no later than 10 calendar days after filing of the Operative Complaint which is to include Shellenbaum as a named plaintiff, Shellenbaum will file with the Court in the Shellenbaum Lawsuit a Request for Dismissal in the PAGA Only action pending with the Orange County Superior Court, Case No. 30-2021-01232903-CU-OE-CXC without prejudice as to Shellenbaum's individual PAGA claim and without prejudice as to other allegedly aggrieved employees.

9.3 The Parties agree that no later than thirty (30) calendar days after the Effective Date, Shellenbaum will file a Request for Dismissal with prejudice in its entirety in Shellenbaum's individual arbitration pending with AAA, Case No. 01-23-0000-3872, with each side to bear their own respective attorneys' fees and costs ("Shellenbaum Arbitration Action"). The Parties agree to stay the Shellenbaum Arbitration Action upon signing of this Agreement, including any discovery or other deadlines therein. The Parties agree to promptly notify AAA of the settlement and request to vacate any pending hearings or status conferences in the Shellenbaum Arbitration Action pending approval of the settlement, such that no further invoice deposit will be issued to the Parties.

9.4 Plaintiffs will promptly move the Court for approval of the Settlement pursuant to Labor Code § 2699(l). The Parties agree to use their best efforts to obtain approval as quickly as possible, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining the Court's approval of the Agreement in all respects. The Parties also agree that in the event the Court does not approve the Settlement, the Parties will work in good faith to amend the Settlement to comport with the Court's instructions.

9.5 In the event an appeal or petition for writ of mandamus is filed from the Court's order granting approval of the Settlement, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

10. INDIVIDUAL ACTION

10.1 The Parties agree that no later than thirty (30) calendar days after the Effective Date, CROSSMARK agrees to pay to Plaintiff Sgontz's counsel in the individual action, The Work Justice Firm, the total sum of Thirty Thousand Dollars and Zero Cents (\$30,000.00), less applicable withholdings, as a full and complete settlement of Sgontz's individual claims asserted in the Sgontz Lawsuit, as well as all claims alleged in Sgontz's separate individual action entitled

Wendy Sgontz v. CROSSMARK, Inc., originally filed in Superior Court of Orange County, California, Case No. 30-2023-01307932-CU-OE-CJC, removed to federal court, Case No. 8:23-cv-00547-CJC-KES, and subsequently initiated in arbitration with AAA, Case No. 01-23-0002-0338 (“Sgontz Individual Action”). This settlement payment will be made in two checks: (1) one check for alleged lost wages may payable to Sgontz in the amount of \$7,762.39, less applicable withholdings; and (2) one check for alleged emotional distress, physical injury, penalties, interest, attorneys fees and costs, made payable to The Work Justice Firm in the amount of \$22,237.61, subject to the issuance of an IRS Form 1099. The foregoing payment is conditioned on the following: No later than ten (10) calendar days after the Effective Date, CROSSMARK is provided with a completed IRS W-9 for Sgontz and Sgontz’s counsel, and a completed Request for Dismissal of the Sgontz Individual Action with prejudice as to all parties and all causes of action executed by Sgontz’s counsel. The Parties agree to stay the Sgontz Individual Action upon signing of this Agreement, including any discovery or other deadlines therein. The Parties agree to promptly notify AAA of the settlement and request to vacate any pending hearings or status conferences in the Sgontz Individual Action pending approval of the settlement, such that no further invoice deposit will be issued to the Parties

11. PUBLICITY

Plaintiffs and Plaintiffs’ counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communications with the press about the facts, amount, or terms of the settlement. Plaintiffs’ counsel may respond to press inquiries by stating the matter has been resolved and refer the press to court filings. In addition, Plaintiffs and Plaintiffs’ counsel agree that they will not engage in any advertising or distribute any marketing materials specifying any material terms relating to the Settlement of the Actions or of the Sgontz Individual Action, including but not limited to any postings on any websites maintained by Plaintiffs’ Counsel and including but not limited to the identity of CROSSMARK and/or any information that identifies CROSSMARK and/or the Released Parties. The Settlement Administrator shall not create nor maintain any separate website regarding this Settlement at any time. Any communication about the Settlement to Aggrieved Employees prior to the Court-approved mailing of the Notice will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice. Plaintiffs are prohibited from discussing the terms or the fact of the settlement with third parties other than (1) their immediate family members, and/or (2) their accountants or lawyers as necessary for tax purposes. Furthermore, Plaintiffs and Plaintiffs’ counsel will undertake any and all disclosures and submissions of papers that are required to be made to the LWDA in conformity with PAGA.

12. INAPPLICABILITY OF CALIFORNIA CIVIL PROCEDURE CODE SECTION 384

The Parties agree that California Civil Procedure Code (“CCP”) section 384 is not applicable to the Gross Settlement Amount. Neither Plaintiffs nor Plaintiffs’ Counsel shall take, or cause any other person to take, a position before the Court that CCP section 384 applies to the Gross Settlement Amount.

13. MISCELLANEOUS PROVISIONS

13.1 Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

13.2 Interpretation of the Agreement. The Agreement will be interpreted and enforced under the laws of the State of California without regard to its conflict of law provisions.

13.3 Final Agreement. This Agreement constitutes the exclusive and final understanding and expression of all agreements between the Parties with respect to the resolution of the Actions and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof. Plaintiffs, on Plaintiffs' own behalf and as representatives for the Aggrieved Employees, and CROSSMARK enter into this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement. The Agreement may be modified only by a writing signed by the Parties, or their successors, and approved by the Court.

13.4 Counterparts/Facsimile/Electronic. The Agreement may be executed in one or more actual, telecopied or electronic counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals. A signature on this Agreement delivered by facsimile or electronically shall be as legally binding as an original signature, although the Parties will provide original signatures to each other for their records.

13.5 Authority. Counsel for all Parties represent and warrant they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties shall seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of CROSSMARK represent and warrant that they are authorized to sign this Agreement on behalf of CROSSMARK.

13.6 No Effect on Employee Benefits. The Individual Settlement Payments and Enhancement Payments shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiffs or any Aggrieved Employee. The payment of the Individual Settlement Payments does not represent any modification of Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by CROSSMARK. Further, any Individual Settlement Payment or Enhancement Payments shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by CROSSMARK.

13.7 No Injunctive Relief. CROSSMARK shall not be required to enter into any consent decree, nor shall CROSSMARK be required to agree to any provision for injunctive relief, or to modify or eliminate any of its personnel, compensation, or payroll practices, or adopt any new personnel, compensation, or payroll practices.

13.8 Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

13.9 Cooperation and Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.

13.10 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

13.11 Defense. To the extent permitted by law, this Settlement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in breach of or contrary to this Settlement.

WHEREFORE, Plaintiffs, as representative of themselves and Aggrieved Employees, and CROSSMARK, have executed this Agreement as of the dates set forth below.

PLAINTIFF WENDY SGONTZ

Dated: 03 / 13 / 2024, 2023



Wendy Sgontz, Plaintiff

PLAINTIFF VICKY WRIGHT

Dated: 03 / 13 / 2024, 2023



Vicky Wright, Plaintiff

PLAINTIFF NICOLE GREGORY

Dated: 03 / 13 / 2024, 2023



Nicole Gregory, Plaintiff

PLAINTIFF JENNIFER SHELLENBAUM

Mar 12, 2024
Dated: _____, 2023


Jennifer Shellenbaum (Mar 12, 2024 12:08 PDT)

Jennifer Shellenbaum, Plaintiff

DEFENDANT CROSSMARK, INC.

Dated: _____, 2023

Full Name: _____

Title: _____

On behalf of CROSSMARK, Inc.

PLAINTIFF JENNIFER SHELLENBAUM

Dated: _____, 2023

Jennifer Shellenbaum, Plaintiff

DEFENDANT CROSSMARK, INC.

Dated: _____, 2023

03/20/2024

Richard Baxter
78B424DCBF840BB5F1B22C7FA01283D0 contractworks

Full Name: **Richard Baxter**

Title: **CFO**

On behalf of CROSSMARK, Inc.

EXHIBIT

2

Notice of PAGA Settlement and Release of Claims

**Wendy Sgontz v. CROSSMARK, Inc., Superior Court of California County of Orange
Case No. 30-2021-01204377-CU-OE-CXC**

<<EmployeeName>>

Dear [NAME]:

I. NOTICE OF PAGA SETTLEMENT

The Orange County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Plaintiffs Wendy Sgontz (“Sgontz”), Vicky Wright (“Wright”), Nicole Gregory (“Gregory”), and Jennifer Shellenbaum (“Shellenbaum”) (collectively “Plaintiffs”) against Defendant CROSSMARK, Inc. (“CROSSMARK”). According to CROSSMARK’s records, you were employed by CROSSMARK as a non-exempt employee in California at some time during the time period of December 8, 2019 to December 1, 2023 (the “Settlement Period”). Plaintiffs are former employees of CROSSMARK who filed the instant lawsuit against CROSSMARK under the Private Attorneys General Act of 2004 (“PAGA” at Labor Code § 2699), alleging a PAGA claim based upon various alleged Labor Code violations, including, but not limited to, alleged violations for failure to pay minimum and overtime wages, failure to provide meal periods and/or premiums, failure to provide rest periods and/or premiums, failure to provide accurate itemized wage statements, failure to timely pay all wages upon separation of employment, failure to provide paid sick leave, failure to maintain accurate records, and failure to reimburse business expenses.

Plaintiffs sought civil penalties on behalf of the State of California and all current and former employees of CROSSMARK or a subsidiary or affiliate of CROSSMARK who were or are employed in the State of California and worked or performed services for CROSSMARK as hourly or non-exempt employees during the Settlement Period (“Aggrieved Employees”).

The Court has not made a determination about Plaintiffs’ allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim. However, the Court has approved the civil penalties settlement amount to be paid by CROSSMARK.

CROSSMARK maintains that it was in compliance with the California Labor Code at all times and enters into this settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

You worked <<PayPeriods>> pay periods during the Settlement Period.

Your individual PAGA payment is estimated to be <<Check Amount>>.

Each individual PAGA payment was calculated on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each Aggrieved Employee in the Settlement Period divided by the total number of pay periods worked by all Aggrieved Employees.

III. RELEASE

The Court has approved the parties' settlement. Pursuant to the settlement, all Aggrieved Employees, including Plaintiffs, and their successors, assigns, and/or agents, and the LWDA, shall be deemed to have fully and finally released and forever discharged CROSSMARK, CHI Management Group, LP, CHI Management Group, LLC, Sam's West, Inc., WellPath Management, Inc., Walmart Inc., CVS Health Corporation, CVS Pharmacy, Inc., Target Corporation, Target Brands, Inc., Rite Aid Corporation, The Kroger Co., Albertsons Companies, Inc., and each of their past, present, and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of their respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them (collectively, the "Released Parties"), from the "PAGA Released Claims." For purposes of this Agreement, the "PAGA Released Claims" constitute any and all claims, debts, liabilities, demands, actions, or causes of action for civil penalties that were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, as amended, that occurred during the Settlement Period, including all claims for civil penalties for Released Parties' alleged failure to pay all wages due, including minimum wages, overtime wages and regular wages; failure to pay for all hours worked; off-the-clock work; failure to pay overtime compensation at the regular rate of pay; failure to pay meal and/or rest period penalties at the regular rate of pay; the calculation of the regular rate of pay; failure to provide meal and/or rest periods; failure to pay proper meal or rest period penalties; refusal to make and/or falsely denied payments due; failure to provide paid sick days; failure to pay sick pay at the regular rate of pay; failure to place employees on notice of their workplace rights, including paid sick leave rights; failure to maintain accurate records documenting the hours worked and paid sick days accrued and used; unlawfully retaining paid sick leave; failure to keep accurate and complete time records; rounding; failure to provide and maintain accurate itemized wage statements; unlawful deductions; failure to keep accurate employee payroll records; failure to timely pay wages during employment; failure to timely pay wages at separation of employment; failure to reimburse business expenses; failure to provide suitable seating; unlawful non-compete and/or non-solicitation agreements; misclassification; unlawful criminal and/or financial background checks as a condition of hire and/or continued employment; unlawful request to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment or otherwise impermissible inquired into employee criminal history on employment applications; requirement that employees agree in writing to terms or conditions that violate the law as a condition of employment; failure to provide a safe and healthful place of employment; waiting-time penalties; and claims based on the facts of the Operative Complaint for alleged violations of California Labor Code Sections 201-204, 208, 210, 216, 218.5, 218.6, 221-223, 225.5, 226, 226.3, 226.6, 226.7, 226.8, 227.3, 233, 234, 245-248.6, 256, 351, 432, 432.5, 432.7, 510, 511, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198-1199, 1198.5, 2350, 2802, 2804, 2810.5, 2698 *et seq.*, 6400-6404, 6406-6407, 6409.6, 6432, for alleged violations of California Code of Regulations, title 9, sections 1527, 3203, 3364, 3365, 3366, 3457, and 8397.4, and applicable California Industrial Welfare Commission ("IWC") Wage Orders during the Settlement Period, against the Released Parties.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

You are not a party to this lawsuit, but you and the government are bound by the judgment in this matter as to the civil penalties under PAGA.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, ILYM, Inc. toll free at _____ with any questions. You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the State of California Unclaimed Property Fund in the name of the Aggrieved Employee to whom the check was issued. Unclaimed funds may be claimed at https://www.sco.ca.gov/upd_msg.html. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT

3



Zachary Crosner, Esq.
 Managing Attorney
 Los Angeles Office
 433 N. Camden Dr., Ste. 400
 Beverly Hills, CA 90210

zach@crosnerlegal.com
 office: (310) 496-5818
 fax: (310) 510-6429

July 9, 2020

VIA ONLINE FILING ONLY:

California Labor & Workforce Development Agency
 ATTN: PAGA Administrator
 455 Golden Gate Avenue, 9th Floor
 San Francisco, CA 94102
 PAGAfilings@dir.ca.gov-

VIA U.S. CERTIFIED MAIL:

Crossmark, Inc.
 6400 International PKWY Suite 1000-2000
 Plano, TX 75093

Crossmark, Inc.
 5959 W. Las Positas Blvd
 Pleasanton, CA 94566

Sam's West, Inc.
 702 SW 8th Street
 Bentonville, AR, 72716-0555

Corporate Creations Network Inc.
 Agent For Service for:
 Sam's West, Inc.
 Employees Authorized to Accept Service:
 Amanda Garcia, Vivian Imperial, Gladys
 Aguilera, Gabriela Sanchez, Daisy
 Montenegro, Beatrice Casarez-Barrientez,
 Carlos Paz, Alberto Damonte, Jessie
 Gastelum, Peter Cayetano

WellPath Management, Inc.
 Michael Kuritzky, CFO
 3911 Sorrento Valley Blvd. Ste. 130
 San Diego, CA 92121

Corporate Creations Network Inc.
 Agent For Service for:
 Capitol Corporate Services, Inc.
 Employees Authorized to Accept Service:
 Lo Saechao, Leigh Johnson, Mary Viducich

455 Capitol Mall Complex, Suite 217
 Sacramento, CA 95814

818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Subject: *Wendy Sgontz, on behalf of herself and all similarly situated aggrieved employees v. Sam's Club and Crossmark, Inc. et. al., Cal. Labor Code sections 2699.3 and 2699.5 Notice of Labor Code Violations*

This office represents Complainant Wendy Sgontz (hereinafter "Complainant") in connection with her claims under the California Labor Code. Complainant was, at all relevant times herein mentioned, an employee of the above-named entities and individual managing agents of said entities (hereinafter to be collectively referred to as "Employer").

Employer may be contacted directly at the above addresses. Pursuant to California Labor Code sections 2699.3 and 2699.5, Complainant, on behalf of herself, and on behalf of similarly situated aggrieved current and former employees of Employer, hereby gives written notice ("Notice") of his claims against Employer. This Notice is being provided via online filing to the California Labor and Workforce Development Agency ("LWDA") and Employer via Employer's principal address for business operations and via its Agents for Service of Process. This Notice also serves to demonstrate Complainant's reasonable attempt at settlement with Employer. If Employer is interested in settling this matter before a lawsuit is filed, Employer may contact Crosner Legal, P.C. at the address listed at the close of this letter. This settlement attempt is in compliance with relevant California law. *Graham v. DaimlerChrysler Corp.* (2004) 24 Cal.4th 553, 561.

This letter is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This letter further reserves any and all rights by Complainant to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with

violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Employer is on notice that Complainant continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If Employer intends to cure the alleged violations within the statutory time period set forth in §§ 2699 and 2699.3(a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to Section 2699.

Based on the following summary of the facts and theories upon which Complainant will base his claims, Complainant requests that the LWDA regard this Notice as written notice of his intent to seek civil penalties against Employer. The specific provisions of the California Labor Code that Employer has violated requiring this notice include but are not limited to California Labor Code sections 201, 202, 204, 216, 221-223, 226, 226.7, 226.8, 432.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2802, and all applicable IWC Wage Orders. These violations subject Employer to civil penalties as set forth in (1) the foregoing statutes, (2) Labor Code sections 203, 210, 225.5, 226.3, 256, 558, 558.1, 1174.5, 1194.2, 1197.1, and 2699, and (3) IWC Wage Order 7-2001 (and all applicable wage orders), section 20.

The Named Entities Are Joint Employers of Complainant and Aggrieved Employees

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

Complainant believes and hereon asserts that Employer Sams Club, and unknown entities must be classified as joint employers of Complainant for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted Complainant to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Complainant at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of Complainant and aggrieved employees, they are each liable for civil penalties for violation of the California Labor Code as to Complainant and similarly aggrieved employees.

Employer is Liable for All Temporary Agency Workers

California Labor Code Section 2810.3 requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor in California for the payment of wages. Section 2810.3 prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. It defines a client employer as a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor. It defines a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer's usual course of business.

Pursuant to Section 2810.3, where the employer secured temporary labor from a labor contractor the employer shares in all legal responsibility and civil liability with its labor contractor(s), for all workers supplied by such labor contractor(s), for payment of wages. Thus, Employer is still liable for their employees even though they may be supplied to other employers.

Individual Liability Under Labor Code Sections 558 and 558.1

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 (\$50.00) 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 (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.” 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.”

In passing AB 588, the California legislature added Labor Code Section 558.1. Labor Code Section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code Sections 203, 226, 226.7, 1194, and 2802. Employer, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Complainant and similarly aggrieved employees' rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “*a natural person who is an owner, director, officer, or managing agent of the employer.*” The “managing agent” definition mirrors that found in California's punitive damages statute. (subdivision (b) of Section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 566-67 (Cal. 1999). For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under

California law, and therefore, may be held liable under California Labor Code Sections 558 and 558.1 for violations of Labor Code Sections 203, 226, 226.7, 1194, and 2802 as further described in detail below.

Complainant intends to further name any unknown individuals responsible for violations arising under Labor Code Sections 558 and 558.1 after further discovery. Complainant will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. Complainant asks and demands that Employer to put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, Complainant also offers to Employer to place those individuals on notice if Employer voluntarily provides their contact information.

The Employer; Summary of Labor Code Violations

Crossmark, Inc and Sam's Club West, Inc. and its managing agents own, operate, or otherwise manage a company that is dedicated to delivering products for purchase and being a one stop store, where customers can go to find a multitude of items, varying from groceries to electronics. While Employers may be successful companies/may have a noble mission, they do not comply with California labor law.

Among other things, Employer failed/fails to keep accurate and complete time records for employees; failed/fails to pay employees for all hours worked; failed/fails to pay employees at least minimum wage for all hours worked or overtime/regular rates for corresponding work; failed/fails to provide employees with proper meal or rest breaks, and/or compensate Complainant and similarly situated aggrieved employees an additional hour of premium pay for missed/improper meal and/or rest periods; refused/refuses to make and/or falsely denied the amount of payments due to employees, including but not limited to, owed sick pay; failed/fails to place employees on proper notice of their workplace rights, including but not limited to owed sick pay, failed/fails to provide proper and accurate wage statements to employees; made unlawful deductions from employees' paychecks; misclassified employees as independent contract workers; failed/fails to pay all wages due to terminated employees within the time required by California law; conducted/conducts unlawful background checks as a condition of hire/continued employment; required/requires its employees to sign off on unlawful non-compete/non-solicitation agreements; and failed/fails to reimburse employees for business expenses incurred on behalf of Employer. Further descriptions of the above-mentioned violations and others are explained below.

Complainant and the Aggrieved Employees

Complainant Initially worked for a company called Crossmark, Inc. who placed her at Sam's Club from September of 2018 until she was terminated in April 2020. Complainant provided samples to store customers, cleaned & dried dishes in the kitchen, sanitized carts, put up price signs, pulled product off the floor, gathered all items needed to serve samples. Much of the preparation work and cleaning was done off the clock because there was not enough time for it. She worked 6 hours per day, 3-5 days a week at the Fountain Valley Sam's club in Fountain Valley, CA. Two to three times a year, during the holiday season, she would work in excess of seven consecutive days. During these times she was not paid the proper premiums to do so. Employer had employees log into an app to record their total hours

worked. Complainant would not clock in at the start of her shift, however at the end of the shift she was instructed by her manager to put that she worked 360 minutes (six hours). Complainant's manager, Trina, was adamant that employees could only put in 360 minutes and nothing longer. On an almost daily basis plaintiff was required to work off the clock. This was because there was typically more work that needed to be done in the kitchen. So workers continue to work 5-10 minutes longer than their 6 hour shifts, but would still only notate 6 hours when logging their hours worked on the app. Complainant was not provided any seating although it was feasible.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 7-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, Employer has failed, and continues to fail, to keep the required time records. Employer has failed/fails to keep accurate and complete records showing total hours worked by each employee and the amount of pay per job/how the pay is calculated. Employer has failed/fails to keep accurate records of meal and rest periods owed/taken by its employees; despite denying Complainant and similarly aggrieved employees of their owed meal and rest periods, Employer simply required the employee to work throughout the entirety of his shift and failed to pay any premiums for those denied meal and rest periods. Additionally, as the paystub show, there were no rest period or meal breaks taken and no premiums were paid. The complainant worked straight through for at least six hours without getting the legally required meal and rest breaks.

At all relevant times, Employer has failed, and continues to fail, to keep the required time records. Employer has failed/fails to keep accurate and complete records showing total hours worked by each employee. Upon information and belief, Employer used a rounding system that as applied worked to detrimentally shave and round time off from Complainant and similarly situated aggrieved employees' workdays. Complainant alleges on information and belief that through the operation of Employer's rounding system, Complainant and aggrieved employees would systematically be deprived of compensable time because the time recording system implemented by Employer would almost always, if not always, understate actual compensable work time due to the rounding. This time shaving, implemented by and through Employer's unlawful rounding policies and/or procedures, resulted in not only time recordkeeping violations but also violations of California's minimum and overtime wage laws.

Employer used the rounding system when calculating the complainant and similarly aggrieved employees' hours. Employer rounded each shift to the nearest hour regardless of what time the complainant shift started and ended. As evidenced by complainant's pay stubs, complainants' actual hours worked were not accounted for. This is also evidenced by notes in the complainant's personal file.

Employer's failure to keep "accurate and complete" payroll records for Complainant and similarly aggrieved employees violates Labor Code sections 1174, 1198, 1199, and Wage Order 7-2001, section 7. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage Order 7-2001 (and All applicable IWC Wage Orders), §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 7-2001, §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code §226.7; IWC Wage Order 7-2001, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

Employer did not have a written meal break policy nor did they have any sort of compliant policy in practice. For example, Employer prohibited Complainant and similarly aggrieved employees from leaving their work sites during their shifts such that they were tethered to their work locations and therefore could not take proper meal periods during the relevant time period. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainant and similarly aggrieved employees with proper meal periods.

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Complainant was not permitted to take any legally compliant meal nor rest breaks during his entire six to eight-hour shifts. Liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable wage orders requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Complainant typically worked six (6) hours per shift. Complainant would not receive a single thirty (30) minute meal break or rest break. Employer did not provide Complainant the required meal and rest breaks by law. After five hours of work, the complainant would be required to work through his legally entitled meal and rest periods. Despite not providing its employees with the meal breaks to which they were legally entitled, Employer did not pay any premiums for these missed meal breaks in violation of California law. *Brinker, supra*, 53 Cal.4th 1004.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 7-2001, §11(A) and (C) along with all applicable IWC Wage Orders. These violations subject Employer to civil penalties under Labor Code sections 558.1, 558 and 2699, and Wage Order 7-2001, §20 and all applicable IWC Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² Employer's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately resulted/results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. IWC Wage Order 7-2001, §12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code §226.7; IWC Wage Order 7-2001, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Employer did not properly authorize and provide Complainant and similarly aggrieved employees with appropriate rest periods at a rate of four hours or major fraction thereof. Complainant and similarly aggrieved employees were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Employer prohibited Complainant and other Aggrieved Employees from leaving the work premises during their rest breaks – per Employer's rest

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 7-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

break policy, they were permitted to go only as far as the parking lot during their rest breaks. This is illegal as employers cannot require employees to stay on the work premises during their rest periods as “one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods. [emphasis added].” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Ergo, any rest break policy, such as Employer’s here, that requires employees to stay on the work premises during their rest breaks is unlawful. As noted, liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable wage orders requirements. *Brinker, supra*, 53 Cal.4th 1004.

Employer did not allow Complainant and similarly aggrieved employees to take proper rest breaks. This meant that if complainant or a similarly aggrieved employees needed to take a break, they were not permitted to do so because they would be away from their post for long periods of time. Complainant was not able to use the restroom during his shifts without being called into question. Complainant and similarly aggrieved employees would not receive proper rest breaks, nor would they be separately compensated for said rest breaks in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Complainant would work for six hours straight and per his pay stub would be compensated for the entire six hours with no breaks or rest periods accounted for.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 7-2001, §12(A). These violations subject Employer to civil penalties under Labor Code section 2699, and Wage Order 7-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage/Regular Wage Violations:

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

Employer failed to compensate Complainant and similarly aggrieved employees for all hours worked. Complainant provided samples to store customers, cleaned & dried dishes in the kitchen, sanitized carts,

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 7-2001, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

put up price signs, pulled product off the floor, gathered all items needed to serve samples. Much of the preparation work and cleaning was done off the clock because there was not enough time for it. Two to three times a year, during the holiday season, she would work in excess of seven consecutive days. During these times she was not paid the proper premiums to do so. Employer had employees log into an app to record their total hours worked. Complainant would not clock in at the start of her shift, however at the end of the shift she was instructed by her manager to put that she worked 360 minutes (six hours). Complainant's manager, Trina, was adamant that employees could only put in 360 minutes and nothing longer. On an almost daily basis plaintiff was required to work off the clock. This was because there was typically more work that needed to be done in the kitchen. So workers continue to work 5-10 minutes longer than their 6 hour shifts, but would still only notate 6 hours when logging their hours worked on the app.

These violations subject Employer, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 7-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order 7-2001, §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid*.

Employer violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by Complainant and other similarly situated aggrieved employees and not paying proper overtime rates for any overtime worked by failing to incorporate all of Complainant's nondiscretionary bonuses/other nondiscretionary pay (for example, various types of holiday pay) into the regular rate of pay for purposes of calculating overtime. Based on employees' regular work schedules as noted, Complainant typically worked six to eight hours a day, six (6) days per week. Complainant and other similarly situated aggrieved employees worked a significant amount of overtime each week for which they were not properly compensated. Additionally, employer failed to properly calculate overtime because they did not take into consideration all of the non-discretionary bonuses to get to the correct pay rate. Complainant and other similarly aggrieved employees were not paid their correct rates based on the employer not including the accurate amount for each hour they worked over the time that they were supposed to.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 7-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Wage Order 7-2001, §12(A). These violations subject employer to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 7-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Two to three times a year, during the holiday season, she would work in excess of seven consecutive days. During these times she was not paid the proper premiums to do so. Complainant never was paid over time and properly compensated for all her hours worked. Employer had employees log into an app to record their total hours worked. Complainant would not clock in at the start of her shift, however at the end of the shift she was instructed by her manager to put that she worked 360 minutes (six hours). Complainant's manger, Trina, was adamant that employees could only put in 360 minutes and nothing longer.

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, Employer failed to provide paid sick leave to Complainant and similarly aggrieved employees, further failing to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Employer failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employee throughout the relevant time period. Notably, where an employer compensates an employee with non-discretionary bonus pay (as Employer did here), any sick leave/sick pay calculation must incorporate the value of the non-discretionary bonuses; upon information and belief, Employer's sick leave/sick pay calculation did not. In addition, throughout the relevant time period, Employer failed to provide notice of the correct sick leave amount balance left for Complainant and aggrieved employees, and thus affecting their intelligent exercise of their paid sick leave. But for this failure, Complainant and similarly aggrieved employees would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation. This illegal retention of paid sick leave is unlawful and Complainant seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of himself and all aggrieved employees.

An Employer is required to provide paid sick days in accordance to Labor Code Section 245 through 248.5. Employer failed to provide a Labor Code Section 2810.5 notice, putting Complainant on notice of his right to use paid sick leave. Employer failed to provide the posting required by these statutes, showing and demonstrating all of the following:

- (1) An employee is entitled to accrue, request, and use paid sick days.
- (2) The amount of sick days provided for by this article.

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 7-2001, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

(3) The terms of use of paid sick days.

(4) That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

Moreover, in violation of Labor Code Section 247.5, Employer failed to maintain records documenting the hours worked and paid sick days accrued and used by employee, permitting the presumption that Complainant was entitled to the maximum number of hours accruable under this article at the time of his termination. Employer further failed to comply with Labor Code Section 246, that is, providing its employees with a 226 statement or separate writing containing amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays its period wages and provides a Labor Code Section 226 statement.

Adding further to injury, Employer unlawfully retained and continues to retain paid sick leave that should have been paid and wasn't as a result of its failure to properly institute a paid sick leave program. On information and belief, Complainant alleges that all of these practices were experienced and continue to be experienced by other similarly aggrieved employees. Complainant requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but wasn't, due to Employer's sole failure to institute such a paid sick leave entitlement/paid sick leave bank as required by California law.

Accordingly, Complainant and other similarly aggrieved employees are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. Complainant requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code Section 233 and 234, which incorporates the paid sick leave requirements.

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. Employer violated this section by failing to pay aggrieved employees an additional hour of pay for meal and rest periods not provided/valid, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject Employer to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁶

Unlawful Deductions: Labor Code Section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Complainant

⁶ Lab. Code §210 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

alleges on information and belief that Employer made unlawful deductions from his paychecks during the relevant time period.

The foregoing violates, including but not limited to, Labor Code Section 221, which subjects Employer to civil penalties under Labor Code Section 2699. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, Employer willfully and systematically denied Complainant and similarly aggrieved employees minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. Employer acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, Employer paid Complainant and similarly aggrieved employees lower wages than those they were entitled to while purporting that Complainant and similarly aggrieved employees were properly paid. Complainant and similarly aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code Section 2699(f)-(g).

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due. Employer violated/violates this section by failing to pay aggrieved employees for all hours worked at the proper wage rate and by failing to pay aggrieved employees an additional hour of pay for each meal/rest period not provided/that was invalid. See, e.g., *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁸

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Lab. Code §226.

⁷ See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

⁸ See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Amongst other items missing, Employer failed to provide an accurate and itemized statement containing, among other things, earned gross and net wages during the time period and total hours worked. Employer committing this kind of violation, makes it almost impossible for the complainant to know all of the additional legal violations.

As a result of Employer's violations of various Labor Code and Wage Order provisions, as discussed herein, Employer failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code section 226, and therefore Employer violated section 226. These violations subject Employer to civil penalties under Labor Code sections 226.3. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Employer's violations with respect to meal periods, rest periods, recordkeeping provisions, and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

Seating Violations: IWC Wage Order 7-2001, §14(A-B) states that employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not engaged in the active work duties that would not permit them to be seated. Throughout the relevant time period, Employer failed to provide any seating for complainant and similarly aggrieved employees. There were no seats provided for cashiers, which would be permissible as the height of the register would permit a seat. Furthermore, if an employee is waiting for additional customers to arrive at the register should be permitted to sit down for periods of time.

IWC Wage Order 7-2001, §14(A-B):

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties. If the nature of the work as a whole requires standing, subsection B applies.

⁹ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes are remedial in nature, and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012). These violations subject Employer, to civil penalties under Wage Order 7-2001, §14 (A-B).

The nature of Complainant's work as a sample giver at all-purpose store and the similarly situated aggrieved employees reasonably permitted the use of seats, and the nature of their work as a whole required that they remain standing while performing their duties. Employer however failed to provide suitable seats in reasonable proximity to their work area and definitely did not provide any behind the cashier station. Therefore, Employer's violations with respect to not providing adequate seating results in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

Violation of Labor Code Section 204:

Pursuant to Labor Code Section 204, an employee's wages are payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Specifically, "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

Employer violated Labor Code Section 204 by virtue of its practice of failing to pay Complainant and similarly aggrieved employees their final paychecks until the following pay period after those employees had been terminated and the payment had become due. This systemic failure to timely pay Complainant and similarly aggrieved employees their due wages pursuant to the time parameters outlined in Labor Code Section 204 subjects Employer to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.¹⁰

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Employer still has not paid aggrieved employees all wages earned and unpaid at the time of discharge, in that Employer has not paid for: (1) time during which meal periods were not provided/valid, (2) an additional hour of pay for meal periods not provided/valid, (3) an additional hour of pay for rest periods not provided/valid, and (4) unpaid minimum and overtime wages. These violations subject Employer to civil penalties under Labor Code section 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each

¹⁰ Lab. Code §210 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

pay period during which the statute provisions were violated.¹¹

Pursuant to Labor Code Section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Non-Compete Agreements/Violation of Labor Code Section 432.5:

On information and belief, Employer required Complainant and other aggrieved employees to sign unlawful non-compete agreements as a condition of hire/maintaining employment. In so doing, Employer violated Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.”), which violations subject Employer to civil penalties under the Labor Code, including without limitation sections 432.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties Complainant and similarly aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties Complainant and similarly aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter to the employer in question and file an online claim to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code §§ 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

¹¹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

If the LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of himself and all other similarly situated California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
433 N. Camden Dr., Ste. 400
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "zach@crosnerlegal.com" <zach@crosnerlegal.com>

Fri, Jul 10, 2020 at 4:06 PM

7/10/2020

LWDA Case No. LWDA-CM-796594-20
Law Firm : Crosner Legal PC
Plaintiff Name : Wendy Sgontz
Employer: Sam's Club and Crossmark, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

4



Zachary Crosner, Esq.
Managing Attorney
Los Angeles Office
9440 Santa Monica Blvd. # 301
Beverly Hills, CA 90210

zach@crosnerlegal.com
office: (310) 496-5818
fax: (310) 510-6429

May 28, 2021

VIA ONLINE FILING ONLY:

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov-

VIA U.S. CERTIFIED MAIL:

Crossmark, Inc.
5100 Legacy Dr
Plano, Texas 75024

Capitol Corporate Services, Inc.
Agent for Service of Process for Crossmark,
Inc.
455 Capitol Mall Complex, Suite 217
Sacramento, CA 95814

Sam's West, Inc.
702 SW 8th Street
Bentonville, AR, 72716-0555

CT Corporation System
Agent For Service for:
Sam's West, Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Subject: Wendy Sgontz, on behalf of herself and all similarly situated aggrieved employees v. Sam's Club and Crossmark, Inc. et. al., Cal. Labor Code sections 2699.3 and 2699.5 AMENDED Notice of Labor Code Violations; LWDA-CM-796594-20

This office represents Complainant Wendy Sgontz (hereinafter "Complainant") in connection with her claims under the California Labor Code. Complainant was, at all relevant times herein mentioned, an employee of the above-named entities and individual managing agents of said entities (hereinafter to be collectively referred to as "Employer").

Employer may be contacted directly at the above addresses. Pursuant to California Labor Code sections 2699.3 and 2699.5, Complainant, on behalf of herself, and on behalf of similarly situated aggrieved current and former employees of Employer, hereby gives written notice ("Notice") of his claims against Employer. This Amended Notice is being provided via online filing to the California Labor and Workforce Development Agency ("LWDA") and Employer via Employer's principal address for business operations and via its Agents for Service of Process. This Notice also serves to demonstrate Complainant's reasonable attempt at settlement with Employer. If Employer is interested in settling this matter before a lawsuit is filed, Employer may contact Crosner Legal, P.C. at the address listed at the close of this letter. This settlement attempt is in compliance with relevant California law. *Graham v. DaimlerChrysler Corp.* (2004) 24 Cal.4th 553, 561.

This letter is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This letter further reserves any and all rights by Complainant to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Employer is on notice that Complainant continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If Employer intends to cure the alleged violations within the statutory time period set forth in §§ 2699 and 2699.3(a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to Section 2699.

Based on the following summary of the facts and theories upon which Complainant will base his claims, Complainant requests that the LWDA regard this Notice as written notice of his intent to seek civil penalties against Employer. The specific provisions of the California Labor Code that Employer has violated requiring this notice include but are not limited to California Labor Code sections 201, 202, 204, 216, 221-223, 226, 226.7, 432.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, and all applicable IWC Wage Orders. These violations subject Employer to civil penalties as set forth in (1) the foregoing statutes, (2) Labor Code sections 203, 210, 225.5, 226.3, 256, 558, 558.1, 1174.5, 1194.2, 1197.1, and 2699, and (3) IWC Wage Order 7-2001 (and all applicable wage orders), section 20.

The Named Entities Are Joint Employers of Complainant and Aggrieved Employees

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

Complainant believes and hereon asserts that Employer Sams Club, and unknown entities must be classified as joint employers of Complainant for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted Complainant to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Complainant at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of Complainant and aggrieved employees, they are each liable for civil penalties for violation of the California Labor Code as to Complainant and similarly aggrieved employees.

Employer is Liable for All Temporary Agency Workers

California Labor Code Section 2810.3 requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor in California for the payment of wages. Section 2810.3 prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. It defines a client employer as a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor

contractor. It defines a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer's usual course of business.

Pursuant to Section 2810.3, where the employer secured temporary labor from a labor contractor the employer shares in all legal responsibility and civil liability with its labor contractor(s), for all workers supplied by such labor contractor(s), for payment of wages. Thus, Employer is still liable for their employees even though they may be supplied to other employers.

Individual Liability Under Labor Code Sections 558 and 558.1

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 (\$50.00) 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 (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.” 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.”

In passing AB 588, the California legislature added Labor Code Section 558.1. Labor Code Section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code Sections 203, 226, 226.7, 1194, and 2802. Employer, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Complainant and similarly aggrieved employees' rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “*a natural person* who is an owner, director, officer, or managing agent of the employer.” The “managing agent” definition mirrors that found in California's punitive damages statute. (subdivision (b) of Section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 566-67 (Cal. 1999). For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code Sections 558 and 558.1 for violations of Labor Code Sections 203, 226, 226.7, 1194, and 2802 as further described in detail below.

Complainant intends to further name any unknown individuals responsible for violations arising under Labor Code Sections 558 and 558.1 after further discovery. Complainant will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. Complainant asks and demands that Employer to put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, Complainant also offers to Employer to place those individuals on notice if Employer voluntarily provides their contact information.

The Employer; Summary of Labor Code Violations

Crossmark, Inc and Sam's West, Inc. and its managing agents own, operate, or otherwise manage a company that is dedicated to delivering products for purchase and being a one stop store, where customers can go to find a multitude of items, varying from groceries to electronics. While Employers may be successful companies/may have a noble mission, they do not comply with California labor law.

Among other things, Employer failed/fails to keep accurate and complete time records for employees; failed/fails to pay employees for all hours worked; failed/fails to pay employees at least minimum wage for all hours worked or overtime/regular rates for corresponding work; failed/fails to provide employees with proper meal or rest breaks, and/or compensate Complainant and similarly situated aggrieved employees an additional hour of premium pay for missed/improper meal and/or rest periods; refused/refuses to make and/or falsely denied the amount of payments due to employees, including but not limited to, owed sick pay; failed/fails to place employees on proper notice of their workplace rights, including but not limited to owed sick pay, failed/fails to provide proper and accurate wage statements to employees; made unlawful deductions from employees' paychecks; failed/fails to pay all wages due to terminated employees within the time required by California law; conducted/conducts unlawful background checks as a condition of hire/continued employment; required/requires its employees to sign off on unlawful non-compete/non-solicitation agreements; and failed/fails to reimburse employees for business expenses incurred on behalf of Employer. Further descriptions of the above-mentioned violations and others are explained below.

Complainant and the Aggrieved Employees

Complainant Initially worked for a company called Crossmark, Inc. who placed her at Sam's Club from September of 2018 until she was terminated in April 2020. Complainant provided samples to store customers, cleaned & dried dishes in the kitchen, sanitized carts, put up price signs, pulled product off the floor, gathered all items needed to serve samples. Much of the

preparation work and cleaning was done off the clock because there was not enough time for it. She worked 6 hours per day, 3-5 days a week at the Sam's club in Fountain Valley, CA. Two to three times a year, during the holiday season, she would work in excess of seven consecutive days. During these times she was not paid the proper premiums to do so. Employer had employees log into an app to record their total hours worked. Complainant would not clock in at the start of her shift, however at the end of the shift she was instructed by her manager to put that she worked 360 minutes (six hours). Complainant's manager, Trina, was adamant that employees could only put in 360 minutes and nothing longer. On an almost daily basis Complainant was required to work off the clock. This was because there was typically more work that needed to be done in the kitchen. So workers continue to work 5-10 minutes longer than their 6 hour shifts, but would still only notate 6 hours when logging their hours worked on the app. Complainant was not provided any seating although it was feasible.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 7-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, Employer has failed, and continues to fail, to keep the required time records. Employer has failed/fails to keep accurate and complete records showing total hours worked by each employee and the amount of pay per job/how the pay is calculated. Employer has failed/fails to keep accurate records of meal and rest periods owed/taken by its employees; despite denying Complainant and similarly aggrieved employees of their owed meal and rest periods, Employer simply required the employee to work throughout the entirety of his shift and failed to pay any premiums for those denied meal and rest periods. Additionally, as the paystub show, there were no rest period or meal breaks taken and no premiums were paid. The complainant worked straight through for at least six hours without getting the legally required meal and rest breaks.

At all relevant times, Employer has failed, and continues to fail, to keep the required time records. Employer has failed/fails to keep accurate and complete records showing total hours worked by each employee. Upon information and belief, Employer used a rounding system that as applied worked to detrimentally shave and round time off from Complainant and similarly situated aggrieved employees' workdays. Complainant alleges on information and belief that through the operation of Employer's rounding system, Complainant and aggrieved employees would systematically be deprived of compensable time because the time recording system

implemented by Employer would almost always, if not always, understate actual compensable work time due to the rounding. This time shaving, implemented by and through Employer's unlawful rounding policies and/or procedures, resulted in not only time recordkeeping violations but also violations of California's minimum and overtime wage laws.

Employer used the rounding system when calculating the complainant and similarly aggrieved employees' hours. Employer rounded each shift to the nearest hour regardless of what time the complainant shift started and ended. As evidenced by complainant's pay stubs, complainants' actual hours worked were not accounted for. This is also evidenced by notes in the complainant's personal file.

Employer's failure to keep "accurate and complete" payroll records for Complainant and similarly aggrieved employees violates Labor Code sections 1174, 1198, 1199, and Wage Order 7-2001, section 7. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage Order 7-2001 (and All applicable IWC Wage Orders), §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 7-2001, §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

presumption arises that the employee was not relieved of duty and no meal period was provided”).

Employers must pay employees an additional hour of wages at the employees’ regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code §226.7; IWC Wage Order 7-2001, §11(B) (“If an employer fails to provide an employee a meal period in accordance with the employee’s regular rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

Employer did not have a written meal break policy nor did they have any sort of compliant policy in practice. For example, Employer prohibited Complainant and similarly aggrieved employees from leaving their work sites during their shifts such that they were tethered to their work locations and therefore could not take proper meal periods during the relevant time period. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainant and similarly aggrieved employees with proper meal periods. Complainant was not permitted to take any legally compliant meal nor rest breaks during his entire six to eight-hour shifts. Liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable wage orders requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Complainant typically worked six (6) hours per shift. Complainant would not receive a single thirty (30) minute meal break or rest break. Employer did not provide Complainant the required meal and rest breaks by law. After five hours of work, the complainant would be required to work through her legally entitled meal and rest periods. Despite not providing its employees with the meal breaks to which they were legally entitled, Employer did not pay any premiums for these missed meal breaks in violation of California law. *Brinker, supra*, 53 Cal.4th 1004.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 7-2001, §11(A) and (C) along with all applicable IWC Wage Orders. These violations subject Employer to civil penalties under Labor Code sections 558.1, 558 and 2699, and Wage Order 7-2001, §20 and all applicable IWC Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² Employer’s failure to provide valid meal periods,

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which

and the automatic deduction for meal periods that were not provided/valid, ultimately resulted/results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. IWC Wage Order 7-2001, §12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code §226.7; IWC Wage Order 7-2001, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Employer did not properly authorize and provide Complainant and similarly aggrieved employees with appropriate rest periods at a rate of four hours or major fraction thereof. Complainant and similarly aggrieved employees were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Employer prohibited Complainant and other Aggrieved Employees from leaving the work premises during their rest breaks – per Employer's rest break policy, they were permitted to go only as far as the parking lot during their rest breaks. This is illegal as employers cannot require employees to stay on the work premises during their rest periods as "one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods. [emphasis added]." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Ergo, any rest break policy, such as Employer's here, that requires employees to stay on the work premises during their rest breaks is unlawful. As noted, liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable wage orders requirements. *Brinker, supra*, 53 Cal.4th 1004.

Employer did not allow Complainant and similarly aggrieved employees to take proper rest breaks. This meant that if complainant or a similarly aggrieved employees needed to take a break, they were not permitted to do so because they would be away from their post for long periods of time. Complainant was not able to use the restroom during his shifts without being

the employee was underpaid"); IWC Wage Order 7-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

called into question. Complainant and similarly aggrieved employees would not receive proper rest breaks, nor would they be separately compensated for said rest breaks in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Complainant would work for six hours straight and per his pay stub would be compensated for the entire six hours with no breaks or rest periods accounted for.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 7-2001, §12(A). These violations subject Employer to civil penalties under Labor Code section 2699, and Wage Order 7-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage/Regular Wage Violations:

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

Employer failed to compensate Complainant and similarly aggrieved employees for all hours worked. Complainant provided samples to store customers, cleaned & dried dishes in the kitchen, sanitized carts, put up price signs, pulled product off the floor, gathered all items needed to serve samples. Much of the preparation work and cleaning was done off the clock because there was not enough time for it. Two to three times a year, during the holiday season, she would work in excess of seven consecutive days. During these times she was not paid the proper premiums to do so. Employer had employees log into an app to record their total hours worked. Complainant would not clock in at the start of her shift, however at the end of the shift she was instructed by her manager to put that she worked 360 minutes (six hours). Complainant's manager, Trina, was adamant that employees could only put in 360 minutes and nothing longer. On an almost daily basis Complainant was required to work off the clock. This was because

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); IWC Wage Order 7-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

there was typically more work that needed to be done in the kitchen. So workers continue to work 5-10 minutes longer than their 6 hour shifts, but would still only notate 6 hours when logging their hours worked on the app.

These violations subject Employer, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 7-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order 7-2001, §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

Employer violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by Complainant and other similarly situated aggrieved employees and not paying proper overtime rates for any overtime worked by failing to incorporate all of Complainant's nondiscretionary bonuses/other nondiscretionary pay (for example, various types of holiday pay) into the regular rate of pay for purposes of calculating overtime. Based on employees' regular work schedules as noted, Complainant typically worked six to eight hours a day, six (6) days per week. Complainant and other similarly situated aggrieved employees worked a significant amount of overtime each week for which they were not properly compensated. Additionally, employer failed to properly calculate overtime because they did not take into consideration all of the non-discretionary bonuses to get to the correct pay rate. Complainant and other similarly aggrieved employees were not paid their correct rates based on the employer not including the accurate amount for each hour they worked over the time that they were supposed to.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 7-2001, §12(A). These violations subject employer to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 7-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 7-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Order provisions were violated.⁵

Two to three times a year, during the holiday season, she would work in excess of seven consecutive days. During these times she was not paid the proper premiums to do so. Complainant never was paid over time and properly compensated for all her hours worked. Employer had employees log into an app to record their total hours worked. Complainant would not clock in at the start of her shift, however at the end of the shift she was instructed by her manager to put that she worked 360 minutes (six hours). Complainant's manager, Trina, was adamant that employees could only put in 360 minutes and nothing longer.

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, Employer failed to provide paid sick leave to Complainant and similarly aggrieved employees, further failing to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Employer failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employee throughout the relevant time period. Notably, where an employer compensates an employee with non-discretionary bonus pay (as Employer did here), any sick leave/sick pay calculation must incorporate the value of the non-discretionary bonuses; upon information and belief, Employer's sick leave/sick pay calculation did not. In addition, throughout the relevant time period, Employer failed to provide notice of the correct sick leave amount balance left for Complainant and aggrieved employees, and thus affecting their intelligent exercise of their paid sick leave. But for this failure, Complainant and similarly aggrieved employees would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation. This illegal retention of paid sick leave is unlawful and Complainant seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of himself and all aggrieved employees.

An Employer is required to provide paid sick days in accordance to Labor Code Section 245 through 248.5. Employer failed to provide a Labor Code Section 2810.5 notice, putting Complainant on notice of his right to use paid sick leave. Employer failed to provide the posting required by these statutes, showing and demonstrating all of the following:

(1) An employee is entitled to accrue, request, and use paid sick

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 7-2001, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

days.

(2) The amount of sick days provided for by this article.

(3) The terms of use of paid sick days.

(4) That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

Moreover, in violation of Labor Code Section 247.5, Employer failed to maintain records documenting the hours worked and paid sick days accrued and used by employee, permitting the presumption that Complainant was entitled to the maximum number of hours accruable under this article at the time of his termination. Employer further failed to comply with Labor Code Section 246, that is, providing its employees with a 226 statement or separate writing containing amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays its period wages and provides a Labor Code Section 226 statement.

Adding further to injury, Employer unlawfully retained and continues to retain paid sick leave that should have been paid and wasn't as a result of its failure to properly institute a paid sick leave program. On information and belief, Complainant alleges that all of these practices were experienced and continue to be experienced by other similarly aggrieved employees.

Complainant requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but wasn't, due to Employer's sole failure to institute such a paid sick leave entitlement/paid sick leave bank as required by California law.

Accordingly, Complainant and other similarly aggrieved employees are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law.

Complainant requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code Section 233 and 234, which incorporates the paid sick leave requirements.

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. Employer violated this section by failing to pay aggrieved employees an additional hour of pay for meal and rest periods not provided/valid, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject Employer to civil

penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁶

Unlawful Deductions: Labor Code Section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” Complainant alleges on information and belief that Employer made unlawful deductions from his paychecks during the relevant time period.

The foregoing violates, including but not limited to, Labor Code Section 221, which subjects Employer to civil penalties under Labor Code Section 2699. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, Employer willfully and systematically denied Complainant and similarly aggrieved employees minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. Employer acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, Employer paid Complainant and similarly aggrieved employees lower wages than those they were entitled to while purporting that Complainant and similarly aggrieved employees were properly paid. Complainant and similarly aggrieved employees are entitled to recover penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code Section 2699(f)-(g).

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer’s refusal to pay wages due and payable and/or denial of the validity of any claim to wages due. Employer violated/violates this section by failing to pay aggrieved employees for all hours worked at the proper wage rate and by failing to pay aggrieved employees an additional hour of pay for each meal/rest period not provided/that was invalid. See, e.g., *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject Employer to civil

⁶ Lab. Code §210 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

⁷ See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁸

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Lab. Code §226.

Amongst other items missing, Employer failed to provide an accurate and itemized statement containing, among other things, earned gross and net wages during the time period and total hours worked. Notably, Employer's wage statements do not reflect an accurate overtime rate of pay because instead of multiplying the regular rate of pay by one and one-half, the pay stubs provide two overtime rate categories and they each provide corresponding rates that are either the same as the regular rate or list no separate rate for the overtime requiring Complainant and similarly aggrieved employees to perform extensive calculations to determine what their pay rates were for each corresponding hour worked. *See, e.g., McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).

As a result of Employer's violations of various Labor Code and Wage Order provisions, as discussed herein, Employer failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code section 226, and therefore Employer violated section 226. These violations subject Employer to civil penalties under Labor Code sections 226.3. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the

⁸ See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

⁹ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

commission. Therefore, Employer's violations with respect to meal periods, rest periods, recordkeeping provisions, and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

Seating Violations: IWC Wage Order 7-2001, §14(A-B) states that employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not engaged in the active work duties that would not permit them to be seated. Throughout the relevant time period, Employer failed to provide any seating for complainant and similarly aggrieved employees. There were no seats provided for cashiers, which would be permissible as the height of the register would permit a seat. Furthermore, if an employee is waiting for additional customers to arrive at the register should be permitted to sit down for periods of time.

IWC Wage Order 7-2001, §14(A-B):

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties. If the nature of the work as a whole requires standing, subsection B applies.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes are remedial in nature, and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012). These violations subject Employer, to civil penalties under Wage Order 7-2001, §14 (A-B).

The nature of Complainant's work as a sample giver at all-purpose store and the similarly situated aggrieved employees reasonably permitted the use of seats, and the nature of their work as a whole required that they remain standing while performing their duties. Employer however failed to provide suitable seats in reasonable proximity to their work area and definitely did not provide any behind the cashier station. Therefore, Employer's violations with respect to not providing adequate seating results in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

Violation of Labor Code Section 204:

Pursuant to Labor Code Section 204, an employee's wages are payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Specifically, "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

Employer violated Labor Code Section 204 by virtue of its practice of failing to pay Complainant and similarly aggrieved employees their final paychecks until the following pay period after those employees had been terminated and the payment had become due. This systemic failure to timely pay Complainant and similarly aggrieved employees their due wages pursuant to the time parameters outlined in Labor Code Section 204 subjects Employer to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.¹⁰

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Employer still has not paid aggrieved employees all wages earned and unpaid at the time of discharge, in that Employer has not paid for: (1) time during which meal periods were not provided/valid, (2) an additional hour of pay for meal periods not provided/valid, (3) an additional hour of pay for rest periods not provided/valid, and (4) unpaid minimum and overtime wages. These violations subject Employer to civil penalties under Labor Code section 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.¹¹

Pursuant to Labor Code Section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are

¹⁰ Lab. Code §210 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

¹¹ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

unpaid. Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Non-Compete Agreements/Violation of Labor Code Section 432.5:

On information and belief, Employer required Complainant and other aggrieved employees to sign unlawful non-compete agreements as a condition of hire/maintaining employment. In so doing, Employer violated Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.”), which violations subject Employer to civil penalties under the Labor Code, including without limitation sections 432.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties Complainant and similarly aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties Complainant and similarly aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter to the employer in question and file an online claim to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code §§ 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of himself and all other similarly situated California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC



Alberto Villavicencio <alberto@crosnerlegal.com>

Thank you for your Amended PAGA Claim Notice Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Reply-To: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: alberto@crosnerlegal.com

Fri, May 28, 2021 at 11:40 AM

05/28/2021 11:40:21 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

5



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (866) 276-7637
fax: (310) 510-6429

July 26, 2023

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Capitol Corporate Services, Inc.
Agent for Service of Process for:
Crossmark, Inc.
Attn: CA Registered Agent Authorized
Employees:
Lo Saechao, Leigh Johnson, and Lucky Yang
455 Capitol Mall Complex, Suite 217
Sacramento, CA 95814

Crossmark, Inc.
Attn: Human Resources / Legal Department
5100 Legacy Dr
Plano, TX 75024

VIA PAGA ONLINE FILING ONLY

Notice to Division of Occupational Safety and
Health Via PAGA Online Filing
Attn: Division of Occupational Safety and
Health (Cal OSHA)
1515 Clay Street, St. 1901
Oakland, CA 94612

The Corporation Trust Company
Agent for Service of Process for:
CVS Health Corporation
1209 Orange St.
Wilmington, DE 19801

C T Corporation System
Agent for Service of Process for:
CVS Pharmacy, Inc.
Attn: CA Registered Agent Authorized
Employees:
Amanda Garcia, Gabriela Sanchez, Daisy
Montenegro, Beatrice Casarez-Barrientez,
Jessie Gastelum, John Montijo, Diana Ruiz,
Sarai Marin, Emanuel Jacobo, Gladys
Aguilera, Vivian Imperial, Carlos Paz,
Alberto Damonte, Peter Cayetano, Elsa
Montanez, Xenia Perez, and Yesenia
Carpenter
330 N Brand Blvd #700
Glendale, CA 91203

C T Corporation System

Agent for Service of Process for:

Target Corporation

Attn: CA Registered Agent Authorized
Employees:

Amanda Garcia, Gabriela Sanchez, Daisy
Montenegro, Beatrice Casarez-Barrientez,
Jessie Gastelum, John Montijo, Diana Ruiz,
Sarai Marin, Emanuel Jacobo, Gladys
Aguilera, Vivian Imperial, Carlos Paz,
Alberto Damonte, Peter Cayetano, Elsa
Montanez, Xenia Perez, and Yesenia
Carpenter

330 N Brand Blvd #700

Glendale, CA 91203

Target Corporation

Attn: Human Resources / Legal Department

1000 Nicollet Mall

Minneapolis, MN 55403

C T Corporation System,

Agent for Service of Process for:

Target Brands, Inc.

1010 Dale St N

St Paul, MN 55117-5603

Target Brands, Inc.

Attn: Human Resources / Legal Department

1000 Nicollet Mall

Minneapolis, MN 55403

CVS Pharmacy, Inc.

Attn: Human Resources / Legal Department

1 CVS Drive

Woonsocket, RI 02895

C T Corporation System

Agent for Service of Process for:

Rite Aid Corporation

Attn: CA Registered Agent Authorized

Employees:

Amanda Garcia, Gabriela Sanchez, Daisy
Montenegro, Beatrice Casarez-Barrientez,
Jessie Gastelum, John Montijo, Diana Ruiz,
Sarai Marin, Emanuel Jacobo, Gladys
Aguilera, Vivian Imperial, Carlos Paz,
Alberto Damonte, Peter Cayetano, Elsa
Montanez, Xenia Perez, and Yesenia
Carpenter

330 N Brand Blvd #700

Glendale, CA 91203

Rite Aid Corporation

Attn: Human Resources / Legal Department

30 Hunter Lane

Camp Hill, PA17011

CSC Lawyers Incorporating Service

Agent for Service of Process for:

The Kroger Co.

Attn: CA Registered Agent Authorized

Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
Brejet Stephens, Crystal Chapman, Janette
McIntyre, Jerome Suarez, Samantha Wiltz,
and Parid Kurbini

2710 Gateway Oaks Drive #150-N

Sacramento, CA 95833

The Kroger Co.

Attn: Human Resources / Legal Department

1014 Vine Street

Cincinnati, OH 45202

C T Corporation System
Agent for Service of Process for:
Albertsons Companies, Inc.
Attn: CA Registered Agent Authorized
Employees:
Amanda Garcia, Gabriela Sanchez, Daisy
Montenegro, Beatrice Casarez-Barrientez,
Jessie Gastelum, John Montijo, Diana Ruiz,
Sarai Marin, Emanuel Jacobo, Gladys
Aguilera, Vivian Imperial, Carlos Paz,
Alberto Damonte, Peter Cayetano, Elsa
Montanez, Xenia Perez, and Yesenia
Carpenter
330 N Brand Blvd #700
Glendale, CA 91203

Albertsons Companies, Inc.
Attn: Human Resources / Legal Department
250 E Parkcenter Blvd
Boise, ID 83706

Albertsons Companies, Inc.
Attn: Human Resources / Legal Department
PO Box 20
Boise, ID 83726-0020

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Division of Occupational
Safety and Health; Crossmark, Inc.; CVS Pharmacy, Inc.; CVS Health
Corporation; Target Corporation; Target Brands, Inc.; Rite Aid Corporation; The
Kroger Co.; and Albertsons Companies, Inc.
Date: July 26, 2023
Subject: *Vicky Wright v. Crossmark, Inc., et. al.*

Introduction

This office represents PLAINTIFF, Vicky Wright (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Crossmark, Inc.; CVS Pharmacy, Inc.; CVS Health Corporation; Target Corporation; Target Brands, Inc.; Rite Aid Corporation; The Kroger Co.; and Albertsons Companies, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS.

Said “NON-EXEMPT AGGRIEVED EMPLOYEES” include the following:

- (1) all non-exempt workers who were directly employed by Crossmark, Inc. regardless of where those non-exempt workers were assigned or staffed to work – in California at any time within one year of the date of this NOTICE;
- (2) all non-exempt workers who were assigned/staffed to work at CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. by Crossmark, Inc. and/or any other staffing/temporary service agencies in California at any time within one year of the date of this NOTICE; and
- (3) all non-exempt workers who were directly employed by CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. in California within one year of the date of this NOTICE.

Said “EXEMPT AGGRIEVED EMPLOYEES” include the following:

- (1) all exempt workers who were directly employed by Crossmark, Inc. regardless of where those exempt workers were assigned or staffed to work – in California at any time within one year of the date of this NOTICE;
- (2) all exempt workers who were assigned/staffed to work at CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. by Crossmark, Inc. and/or any other staffing/temporary service agencies in California at any time within one year of the date of this NOTICE; and
- (3) all exempt workers who were directly employed by CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. in California within one year of the date of this NOTICE (“EXEMPT AGGRIEVED EMPLOYEES”).

This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and the Division of Occupational Safety and Health and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State and/or the Secretary of State of the state of incorporation.

This NOTICE also serves to demonstrate PLAINTIFF’s reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS are interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE.

This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF's claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF's intent to seek civil penalties against DEFENDANTS. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.7, 245-248.6, 432, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, 6400-6404 and 6406-6407, 6409.6, 6432 and all applicable Wage Orders.

The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or

through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

During PLAINTIFF's employment by DEFENDANTS, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were jointly employed by DEFENDANTS for purposes of the Wage Orders, under the alternative definitions of "to employ" adopted by the California Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages, hours and working conditions of PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (2) suffered or permitted PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to work for them; and (3) engaged PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to work for them.

PLAINTIFF is informed and believes, and thereon alleges that at all relevant times DEFENDANTS operated as a single integrated enterprise with common ownership and centralized human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices across all of their locations/facilities and subjected all of the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to these same policies and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control over the day-to-day operations and employment matters, including the power to hire and fire, set schedules, issue employee policies, and determine rates of compensation across its locations in California; (3) DEFENDANTS utilize the same policies and procedures for all California employees, including issuing the same employee handbooks and other form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

PLAINTIFF is informed and believes, and thereon alleges that at all relevant times, DEFENDANTS were the joint employers of PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES upon whose behalf PLAINTIFF brings these allegations and causes of action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES' wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to work so as to be considered the joint employers of PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices, meal and rest periods, reimbursement of business expenses and other working conditions that were distributed to, and/or applied to PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES in a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES' employment with or without cause. Upon information and belief, DEFENDANTS further collectively represented to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES in writing the details of their compensation, and the manner in which they were to take meal and rest periods, the procedures required by DEFENDANTS collectively for recordation of hours worked and the policies applicable to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by which DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, Crossmark, Inc. (hereinafter collectively "Crossmark") hired PLAINTIFF and entered into a written employment agreement with PLAINTIFF. During PLAINTIFF's employment, Crossmark maintained control over many aspects of PLAINTIFF's employment, including, among other things, having the authority to discipline PLAINTIFF, change PLAINTIFF's job assignment, change PLAINTIFF's work hours, change PLAINTIFF's rates of pay, and to terminate PLAINTIFF's employment.

In addition, when PLAINTIFF was first hired, Crossmark provided PLAINTIFF with orientation and training materials. Crossmark issued PLAINTIFF written policies concerning meal periods, rest breaks, timekeeping, hours worked, and payment of PLAINTIFF's wages, with which PLAINTIFF was required to comply. Based on information and belief, among other things, these policies provided that PLAINTIFF's weekly time records be submitted to Crossmark, and Crossmark was supposed to process PLAINTIFF's time records and pay PLAINTIFF for all hours worked. Crossmark exercised ultimate control over the payment of PLAINTIFF's wages, as Crossmark issued PLAINTIFF her paychecks. Finally, Crossmark directed PLAINTIFF to

comply with CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. policies and directions. PLAINTIFF is informed and believes that Crossmark exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other class members.

CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. , Inc. (hereinafter collectively referred to as “CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. ”) similarly suffered or permitted PLAINTIFF to work for them or engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. entered into a written agreement with Crossmark, pursuant to which CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. paid Crossmark to provide it with workers, including PLAINTIFF, to conduct CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. ’s business operations – namely, to work in CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. production/processing centers and/or administration offices. CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. suffered or permitted PLAINTIFF to work at CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. and for the entirety of PLAINTIFF's employment.

CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. further exercised control over PLAINTIFF's wages, hours and working conditions. CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. also: (1) set PLAINTIFF's work hours and provided PLAINTIFF with PLAINTIFF's work schedule; (2) provided PLAINTIFF with policies regarding meal periods and rest breaks, with which PLAINTIFF was required to comply; (3) directly supervised PLAINTIFF's work through its employees; (4) assigned PLAINTIFF job duties and trained PLAINTIFF on said job duties; (5) exercised authority to reprimand and counsel PLAINTIFF regarding any work performance and other issues; (6) exercised authority to end PLAINTIFF's work assignment at any time, which essentially equated to a termination of employment as PLAINTIFF was not guaranteed any other job assignments; (7) required PLAINTIFF to use its timekeeping system for purposes of recording time worked; (8) determined whether and when PLAINTIFF would receive meal periods and rest breaks; (9) subjected PLAINTIFF to unlawful schedules for taking meal periods and rest breaks; and, (10) was responsible for recording when PLAINTIFF began and ended work shifts. On information and belief, CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target

Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. issued further written policies and practices and guidelines governing PLAINTIFF's working conditions with which PLAINTIFF was required to comply. PLAINTIFF is informed and believes that CVS Pharmacy, Inc. and/or CVS Health Corporation and/or Target Corporation and/or Target Brands, Inc. and/or Rite Aid Corporation and/or The Kroger Co. and/or Albertsons Companies, Inc. exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, were an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at the retail stores, offices, facilities, and/or other locations and/or other location(s) in California, including but not limited to the retail stores, offices, facilities, and/or other locations in San Pedro, California.

DEFENDANTS, through its various locations serve the consumer goods and services industry.¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of merchandiser and/or similar title(s) and/or position(s) during the relevant period. PLAINTIFF worked for Crossmark on various diverse dates from in or around 2020 through in or around April 2023, and was assigned by Crossmark to work at various Target, CVS, Rite Aid, Albertsons, and/or Ralphs locations in California, including but not limited to, locations in San Pedro, California, for at least approximately seven (7) months from in or around 2022 through in or around April 2023. PLAINTIFF regularly worked at least five (5) to eight (8) hours per day. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; (12) conducted and continue to conduct illegal criminal and/or financial background checks as a condition of PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment

¹ See <https://www.crossmark.com/careers>; <https://www.cvs.com/>; <https://www.target.com/>; <https://www.riteaid.com/>; <https://www.albertsons.com/>; and <https://www.thekrogerco.com/>. Last visited on July 26, 2023.

and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continue to fail to provide suitable seating; and (15) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment; and (16) fails and continues to fail to provide a safe and healthful place of employment for NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which allowed meal periods were provided each day.

Based on information and belief, DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of DEFENDANTS' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, DEFENDANTS further failed, and continue to fail, to record the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, DEFENDANTS further failed and continue to fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, DEFENDANTS failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, DEFENDANTS failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute,

uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

For example, at times, PLAINTIFF was instructed to clock out for meal periods but to continue working due to the need to complete assigned work tasks. Other times, PLAINTIFF was required to take her meal periods late (ie after the fifth hour of work) due to the need to complete assigned job duties.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual

and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, DEFENDANTS failed to keep accurate records of the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, DEFENDANTS did not have a compliant written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp.*, *v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.").

DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times unable to take compliant rest periods due to their need to complete assigned job

duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises.

For example, PLAINTIFF was frequently if not always required to work through part or all of her owed rest periods due to the need to complete assigned job duties.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten hours.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); and All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

DEFENDANTS’ locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, NON-EXEMPT AGGRIEVED EMPLOYEEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS’ premises which are not designated or reserved for rest, such as their personal vehicles.

DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

DEFENDANTS’ failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS' automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-related phone calls and/or messages they received to their phones and/or personal devices and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, at times, PLAINTIFF was required to review and respond to work-related emails and/or text messages from her supervisor but was not compensated by DEFENDANTS for this off-the-clock work resulting in the underpayment of wages owed to PLAINTIFF.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to spend time reviewing documents, policies and/or training materials without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for this off-the-clock work, resulting in DEFENDANTS' failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all work time and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all time spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g., gloves and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all work time and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, DEFENDANTS' electronic employee time-keeping system/app malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo security screenings and/or other mandated screenings before and/or after a scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who opened their work locations were required to first unlock the doors, turn on all the lights in the store/facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES in charge of closing their location(s) were required to first clock out for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the doors. This resulted in additional off-the-clock post-shift work that was not compensated and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, DEFENDANTS require/required NON-EXEMPT AGGRIEVED EMPLOYEES to travel between DEFENDANTS' stores, facilities and/or locations without compensating NON-EXEMPT AGGRIEVED EMPLOYEES at all and/or in full for the travel time. For example, based on information and belief, due to scheduling issues and/or understaffing, NON-EXEMPT AGGRIEVED EMPLOYEES were at times required after working at their scheduled facility location to cover a shift at another of DEFENDANTS' stores/facilities/locations but were not compensated at all and/or in full for the time spent driving to the second store/facility, resulting in the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES split shift premium wages when they worked split shifts during the relevant period. For example, based on information and belief, at times, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED

EMPLOYEES split shift compensation whenever PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' work schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday..."). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment). DEFENDANTS also failed to separately itemize these split shift premium wages on PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on the pay stub provided to the employee, and it should be shown as a separate category such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc. DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements.

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

DEFENDANTS' failure to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, DEFENDANTS violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Additionally, DEFENDANTS also violated California's overtime laws as to those NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an Alternative Workweek Schedule (AWS). Based on information and belief, DEFENDANTS adopted an Alternative Workweek Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected and/or implemented in accordance with the requirements of California law and/or DEFENDANTS failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws, including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

(C) Election Procedures Election procedures for the adoption and repeal of alternative workweek schedules require the following: (1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another. (2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non- English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to

reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. (7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election. (8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek.

No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this paragraph shall be subject to Labor Code § 98 et seq.

Based on information and belief, PLAINTIFF alleges that DEFENDANTS failed to comply with the above procedures, and thus, failed to properly institute an alternative workweek for the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative workweek schedule. Based on information and belief, DEFENDANTS also failed to report the results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated. Moreover, to the extent there was an AWS that was properly adopted, DEFENDANTS violated California's overtime laws as to NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is required to work the reduced hours." See Section 3 of all applicable Wage Orders.

Based on information and belief, at times during NON-EXEMPT AGGRIEVED EMPLOYEES' respective employments by DEFENDANTS, NON-EXEMPT AGGRIEVED EMPLOYEES

worked subject to an alternative work week schedule. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS, were sent home early and/or worked less hours than those that were scheduled under the AWS. On such shortened shifts, NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to overtime pay at 1.5 times the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid NON-EXEMPT AGGRIEVED EMPLOYEES their base rate for all hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section 1198. As such, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS were also deprived of all owed overtime wages when required to work shortened shifts.

This conduct results in violations of Labor Code sections 218.5, 510, 511, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statements.

Based on information and belief, DEFENDANTS failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, DEFENDANTS further failed and continue to fail to comply with Labor Code section 246, by failing to provide PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

DEFENDANTS unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid sick leave program.

On information and belief, PLAINTIFF alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

PLAINTIFF requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS

violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

DEFENDANTS violated and continue to violate Labor Code section 216 by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As DEFENDANTS failed to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

DEFENDANTS' failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFF and caused and continue to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by DEFENDANTS' failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE

and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” Based on information and belief DEFENDANTS made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute’s provisions were violated.

Reporting Time Pay Violations:

Section 5 of all applicable IWC Wage Orders, provides as follows:

(A) Each 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. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Violation of California Day of Rest Law

Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" their employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, DEFENDANTS have and continue to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, DEFENDANTS failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged

in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, seating, suitable resting facilities, reporting time pay, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFF and all NON-

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly

accrued rates off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

For example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck for at least approximately several days following PLAINTIFF's date of termination, and PLAINTIFF's late final paycheck was devoid of all wages owed including without limitation, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials). Based on information and belief, DEFENDANTS have a policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to wait until the next regularly scheduled pay date to receive their final paychecks without regard for the timing requirements as set forth under Labor Code sections 201 and 202, resulting in DEFENDANTS' failure to timely issue NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES their final paychecks, in violation of Labor Code section 201 and/or 202 and resulting in penalties under Labor Code section 203.

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based in information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Violation of Labor Code Section 208:

Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

¹⁰ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when 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 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. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal cell phones/mobile devices, internet and/or data usage for work-related purposes, including but not limited to, to receive and respond to work-related messages and/or phone calls. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks and/or were otherwise required to use their personal cell phones/mobile devices for work purposes but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses. For example, DEFENDANTS required PLAINTIFF to use her personal cell phone/mobile device to download and use work-related applications, including but not limited to, employee timekeeping

applications, however, DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for this business use of PLAINTIFF's personal cell phone/mobile device, in violation of California law, including but not limited to, California labor code section 2802.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform their assigned job duties and/or for the costs of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. For example, based on information and belief, at times NON-EXEMPT AGGRIEVED EMPLOYEES were required to drive between DEFENDANTS' various stores, facilities, offices and/or other locations and/or use their personal vehicles for other work purposes without receiving any and/or full reimbursement from DEFENDANTS for the vehicle-related expenses incurred in connection therewith. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period. For example, PLAINTIFF was required to drive between DEFENDANTS' stores, facilities and/or locations during PLAINTIFF's shifts and/or was required to drive from one store/facility to cover a second shift at a different store / facility, however, DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for these personal vehicle and/or travel-related business expenses.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to work remotely, including but not limited to, from their homes. As a result of working from home, NON-EXEMPT AGGRIEVED EMPLOYEES were required to use their home internet, electricity, and other utilities in the discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue to lack a policy to reimburse employees who regularly increased utility expenses as a result of working from home. NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' increased utility and internet expenses were expenses for which DEFENDANTS were required to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES a reasonable percentage based on their required business use because said expenses were necessarily incurred by NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES as a direct consequence of the discharge of their duties of employment. Based on information and belief, DEFENDANTS failed and continue to fail to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for all business expenses incurred as a result of DEFENDANTS' requirement that they work remotely from their homes, including but not limited to, cost of home internet, electricity and/or cost of other utilities and/or cost of other tools and/or equipment incurred as result of remote work as required by DEFENDANTS.

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limit on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the

background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, DEFENDANTS ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code section 432.5.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to DEFENDANTS to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, DEFENDANTS knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

Upon information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to

an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Failure to Provide a Safe and Healthful Workplace:

Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the California Occupational Safety and Health Act (“Cal OSHA”), employers must maintain a safe and healthful place of employment.

Specifically, Labor Code section 6400, requires the following:

(a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein...

Labor Code section 6401 provides as follows:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6401.7 (a) provides as follows:

Every employer shall establish, implement, and maintain an effective injury prevention program.

Labor Code section 6402 prohibits the following:

No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Similarly, Labor Code section 6404 provides as follows:

No employer shall occupy or maintain any place of employment that is not safe and healthful.

In addition to the above, Labor Code section 6403 requires that employees provide safety devices to their employees. Labor Code section 6403 states:

No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Similarly, Labor Code section 6406(d) states the following:

No person shall do any of the following ... (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Finally, Labor Code section 6407 provides:

Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Moreover, Labor Code section 6409.6 sets forth the actions an employer (or representative of employer) must take within one business day of receiving notice of potential exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

At all relevant times, DEFENDANTS employed PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-6404, 6406, and 6407.

At all relevant times, DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and/or provide reasonable access to sanitation facilities (including, but not limited to, toilet facilities) and/or otherwise comply with sanitation standards reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401.

At all relevant times, DEFENDANTS had a policy and practice of failing to establish, implement, and/or maintain an effective injury prevention program, in violation of Labor Code section 6401.7. At all relevant times DEFENDANTS had a policy and practice of requiring or permitting employees to go or be in in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402.

At all relevant times, DEFENDANTS had and have a policy and practice of failing or neglecting to: provide and use safety devices and/or provide reasonable access to sanitation facilities (e.g., toilet facilities) and/or otherwise comply with sanitation standards and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403.

PLAINTIFF is informed and believes and thereon alleges that these failures include, without limitation, failing to implement and/or effectively administer a proper injury and illness prevention program; failing to disinfect time clocks and/or other surfaces after use by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate protection equipment (e.g., face masks) to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate distance in working conditions between PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with adequate and

readily accessible sanitation facilities, including but not limited to, washing facilities and/or toilet facilities and/or otherwise failing to comply with the sanitation standards as set forth in including but not limited to, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3364, 3365 and 3366.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide adequate and readily accessible sanitation facilities, and to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, a regular schedule for servicing, cleaning, and supplying for any sanitation facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets for use for each employee.

Based on further information and belief, to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, DEFENDANTS failed to maintain facilities that complied with California law, including without limitation, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3203, 3364, 3365 and 3366.

Moreover, at all relevant times, DEFENDANTS had a policy and practice of failing to give sufficient, adequate and proper notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES of the COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is informed and believes that numerous employees contracted COVID-19 during the relevant time periods, but that DEFENDANTS failed to provide notice to employees. Based on further information and belief, DEFENDANTS do not or did not keep adequate records of written notifications required in subdivision (a) for a period of at least three years.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received notice of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and/or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state or local laws, including but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to notify PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of the subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19 related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

PLAINTIFF is informed and believes , and based thereon alleges that DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets for use by each employee.

PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS violated the Labor Code sections described herein, including without limitation, for failure to: furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19 pursuant to California and local laws.

Based on information and belief, DEFENDANTS failed to protect NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES from exposure to COVID-19 due to, including but not limited to, failing to maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address hazards related to the COVID-19 virus.

As such, DEFENDANTS failed to comply with the occupational safety and health standards, failed to do everything reasonably necessary to protect the health and safety of employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices necessary to maintain a safe and healthful workplace.

As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES and is subject to civil penalties.

Conclusion

DEFENDANTS have violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code. Likewise, PLAINTIFF requests that the Division of Occupational Safety and Health investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, PLAINTIFF requests that the agency and division inform PLAINTIFF if they do not intend to investigate these violations so that PLAINTIFF may file a lawsuit with respect to the allegations discussed in this NOTICE.

If the LWDA and/or the Division of Occupational Safety and Health elect not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

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Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco, Esq.
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "prelit@crosnerlegal.com" <prelit@crosnerlegal.com>

Wed, Jul 26, 2023 at 2:22 PM

7/26/2023

LWDA Case No. LWDA-CM-970986-23

Law Firm : Crosner Legal, PC

Plaintiff Name : Vicky Wright

Employer: Crossmark, Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

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Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

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kiara@crosnerlegal.com
direct: (424) 335-5236
office: (866) 276-7637
fax: (310) 510-6429

July 26, 2023

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Capitol Corporate Services, Inc.
Agent for Service of Process for:
Crossmark, Inc.
Attn: CA Registered Agent Authorized
Employees:
Lo Saechao, Leigh Johnson, and Lucky Yang
455 Capitol Mall Complex, Suite 217
Sacramento, CA 95814

Crossmark, Inc.
Attn: Human Resources / Legal Department
5100 Legacy Dr
Plano, TX 75024

VIA PAGA ONLINE FILING ONLY

Notice to Division of Occupational Safety and
Health Via PAGA Online Filing
Attn: Division of Occupational Safety and
Health (Cal OSHA)
1515 Clay Street, St. 1901
Oakland, CA 94612

C T Corporation System
Agent for Service of Process for:
Walmart Inc.
Attn: CA Registered Agent Authorized
Employees:
Amanda Garcia, Gabriela Sanchez, Daisy
Montenegro, Beatrice Casarez-Barrientez,
Jessie Gastelum, John Montijo, Diana Ruiz,
Sarai Marin, Emanuel Jacobo, Gladys
Aguilera, Vivian Imperial, Carlos Paz,
Alberto Damonte, Peter Cayetano, Elsa
Montanez, Xenia Perez, and Yesenia
Carpenter
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Glendale, CA 91203

Walmart Inc.
Attn: Human Resources / Legal Department
702 SW 8th Street
Bentonville, AR 72716

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Division of Occupational Safety and Health; Crossmark, Inc.; and Walmart Inc.
Date: July 26, 2023
Subject: *Nicole Gregory v. Crossmark, Inc., et. al*

Introduction

This office represents PLAINTIFF, Nicole Gregory (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Crossmark, Inc. and Walmart Inc. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS.

Said “NON-EXEMPT AGGRIEVED EMPLOYEES” include the following:

- (1) all non-exempt workers who were directly employed by Crossmark, Inc. regardless of where those non-exempt workers were assigned or staffed to work – in California at any time within one year of the date of this NOTICE;
- (2) all non-exempt workers who were assigned/staffed to work at Walmart Inc. by Crossmark, Inc. and/or any other staffing/temporary service agencies in California at any time within one year of the date of this NOTICE; and
- (3) all non-exempt workers who were directly employed by Walmart Inc. in California within one year of the date of this NOTICE.

Said “EXEMPT AGGRIEVED EMPLOYEES” include the following:

- (1) all exempt workers who were directly employed by Crossmark, Inc. regardless of where those exempt workers were assigned or staffed to work – in California at any time within one year of the date of this NOTICE;
- (2) all exempt workers who were assigned/staffed to work at Walmart Inc. by Crossmark, Inc. and/or any other staffing/temporary service agencies in California at any time within one year of the date of this NOTICE; and
- (3) all exempt workers who were directly employed by Walmart Inc. in California within one year of the date of this NOTICE (“EXEMPT AGGRIEVED EMPLOYEES”),

This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and the Division of Occupational Safety and Health and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate PLAINTIFF’s reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS are interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF’s claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF’s intent to seek civil penalties against DEFENDANTS. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee’s individual claim is time-barred.

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.7, 245-248.6, 432, 432.5, 432.7,

510, 511, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, 6400-6404 and 6406-6407, 6409.6, 6432 and all applicable Wage Orders.

**The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT
AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES**

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were jointly employed by DEFENDANTS for purposes of the Wage Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages, hours and working conditions of PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (2) suffered or permitted PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to work for them; and (3) engaged PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to work for them.

PLAINTIFF is informed and believes, and thereon alleges that at all relevant times DEFENDANTS operated as a single integrated enterprise with common ownership and centralized human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices across all of their locations/facilities and subjected all of the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to these same policies and practices

regardless of the location(s) where they worked. Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control over the day-to-day operations and employment matters, including the power to hire and fire, set schedules, issue employee policies, and determine rates of compensation across its locations in California; (3) DEFENDANTS utilize the same policies and procedures for all California employees, including issuing the same employee handbooks and other form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

PLAINTIFF is informed and believes, and thereon alleges that at all relevant times, DEFENDANTS were the joint employers of PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES upon whose behalf PLAINTIFF brings these allegations and causes of action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES' wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to work so as to be considered the joint employers of PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices, meal and rest periods, reimbursement of business expenses and other working conditions that were distributed to, and/or applied to PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES in a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES' employment with or without cause. Upon information and belief, DEFENDANTS further collectively represented to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES in writing the details of their compensation, and the manner in which they were to take meal and rest periods, the procedures required by DEFENDANTS collectively for recordation of hours worked and the policies applicable to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by which DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, Crossmark, Inc. (hereinafter collectively "Crossmark") hired PLAINTIFF and entered into a written employment agreement with PLAINTIFF. During PLAINTIFF's employment, Crossmark maintained control over many aspects of PLAINTIFF's employment, including, among other things, having the authority to

discipline PLAINTIFF, change PLAINTIFF's job assignment, change PLAINTIFF's work hours, change PLAINTIFF's rates of pay, and to terminate PLAINTIFF's employment.

In addition, when PLAINTIFF was first hired, Crossmark provided PLAINTIFF with orientation and training materials. Crossmark issued PLAINTIFF written policies concerning meal periods, rest breaks, timekeeping, hours worked, and payment of PLAINTIFF's wages, with which PLAINTIFF was required to comply. Based on information and belief, among other things, these policies provided that PLAINTIFF's weekly time records be submitted to Crossmark, and Crossmark was supposed to process PLAINTIFF's time records and pay PLAINTIFF for all hours worked. Crossmark exercised ultimate control over the payment of PLAINTIFF's wages, as Crossmark issued PLAINTIFF her paychecks. Finally, Crossmark directed PLAINTIFF to comply with Walmart policies and directions. PLAINTIFF is informed and believes that Crossmark exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other class members.

Walmart, Inc. (hereinafter collectively referred to as "Walmart") similarly suffered or permitted PLAINTIFF to work for them or engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that Walmart entered into a written agreement with Crossmark, pursuant to which Walmart paid Crossmark to provide it with workers, including PLAINTIFF, to conduct Walmart's business operations – namely, to work in Walmart production/processing centers and/or administration offices. Walmart suffered or permitted PLAINTIFF to work at Walmart and for the entirety of PLAINTIFF's employment.

Walmart further exercised control over PLAINTIFF's wages, hours and working conditions. Walmart also: (1) set PLAINTIFF's work hours and provided PLAINTIFF with PLAINTIFF's work schedule; (2) provided PLAINTIFF with policies regarding meal periods and rest breaks, with which PLAINTIFF was required to comply; (3) directly supervised PLAINTIFF's work through its employees; (4) assigned PLAINTIFF job duties and trained PLAINTIFF on said job duties; (5) exercised authority to reprimand and counsel PLAINTIFF regarding any work performance and other issues; (6) exercised authority to end PLAINTIFF's work assignment at any time, which essentially equated to a termination of employment as PLAINTIFF was not guaranteed any other job assignments; (7) required PLAINTIFF to use its timekeeping system for purposes of recording time worked; (8) determined whether and when PLAINTIFF would receive meal periods and rest breaks; (9) subjected PLAINTIFF to unlawful schedules for taking meal periods and rest breaks; and, (10) was responsible for recording when PLAINTIFF began and ended work shifts. On information and belief, Walmart issued further written policies and practices and guidelines governing PLAINTIFF's working conditions with which PLAINTIFF was required to comply. PLAINTIFF is informed and believes that Walmart exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, were an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at the retail stores, offices, facilities, and/or other locations and/or other location(s) in California, including but not limited to the retail stores, offices, facilities, and/or other locations in Visalia and Dinuba, California. DEFENDANTS, through its various locations serve the consumer goods and services industry.¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS from in or around January 2023 through in or around on or around May 15, 2023. Crossmark assigned PLAINTIFF to work at various locations, including but not limited to, Walmart stores/locations in including but not limited to, Visalia and Dinuba, California. PLAINTIFF regularly worked at least five and one-half (5 1/2) hours per day. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and

¹ See <https://www.crossmark.com/careers> and <https://www.walmart.com/>. Last visited on July 26, 2023.

continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; (12) conducted and continue to conduct illegal criminal and/or financial background checks as a condition of PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continue to fail to provide suitable seating; (15) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment; and (16) fails and continues to fail to provide a safe and healthful place of employment for NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which allowed meal periods were provided each day.

Based on information and belief, DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of DEFENDANTS' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, DEFENDANTS further failed, and continue to fail, to record the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, DEFENDANTS further failed and continue to fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, DEFENDANTS failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Section (b) of Labor Code section 226 further requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer.” Section (c) of Labor Code section 226 provides that, “an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee’s signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days from the date the employer receives a written request.” An employer’s failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, DEFENDANTS failed to timely produce or make available a current or former employee’s personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee’s total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee’s total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if

the first meal period was not waived. *Ibid.* Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, § 11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

For example, PLAINTIFF was frequently if not always required to take interrupted and/or shortened meal periods and/or was forced to work through her unpaid meal periods completely due to the need to complete assigned work tasks.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, DEFENDANTS failed to keep accurate records of the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, DEFENDANTS did not have a compliant written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and

practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Moreover, under California law rest periods must be a “net” ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times, unable to take compliant rest periods due to PLAINTIFF’s need to complete assigned job duties and/or was unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS’ premises.

For example, PLAINTIFF was frequently if not always required to work through part or all of her owed rest periods and/or was not relieved of all duties and DEFENDANTS’ control during any purportedly off-duty rest periods, in violation of California rest period law.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES’ rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten hours.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS’ control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

DEFENDANTS’ locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a suitable breakroom). As a result, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS’ premises which are not designated or reserved for rest, such as their personal vehicles.

DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

DEFENDANTS' failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS' automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, based on information and belief, DEFENDANTS required PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to spend time reviewing documents, policies and/or training materials without compensating PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for this off-the-clock work, resulting in DEFENDANTS' failure to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all work time and the underpayment of wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, PLAINTIFF was required to perform at least approximately eight (8) hours of off-the-clock work in the form of including but not limited to, watching videos, reading training manuals and/or other materials, and/or taking tests usually if not always remotely from her home outside of scheduled shift times as required by DEFENDANTS. However, DEFENDANTS did not compensate PLAINTIFF at all and/or in full for this off-the-clock work, resulting in the underpayment of wages owed to PLAINTIFF.

Based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all time spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g., gloves and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all work time and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, DEFENDANTS' electronic employee time-keeping system/app malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo security screenings and/or other mandated screenings before and/or after a scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations. For example, based on information and belief, NON-

EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-related phone calls and/or messages they received to their phones and/or mobile devices and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who opened their work locations were required to first unlock the doors, turn on all the lights in the store/facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES in charge of closing their location(s) were required to first clock out for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the doors. This resulted in additional off-the-clock post-shift work that was not compensated and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, DEFENDANTS require/required NON-EXEMPT AGGRIEVED EMPLOYEES to travel between DEFENDANTS' stores, facilities and/or locations without compensating NON-EXEMPT AGGRIEVED EMPLOYEES at all and/or in full for the travel time. For example, based on information and belief, due to scheduling issues and/or understaffing, NON-EXEMPT AGGRIEVED EMPLOYEES were at times required after working at their scheduled facility location to cover a shift at another of DEFENDANTS' stores/facilities/locations but were not compensated at all and/or in full for the time spent driving to the second store/facility, resulting in the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES split shift premium wages when they worked split shifts during the relevant period. For example, based on information and belief, at times, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' work schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment). DEFENDANTS also failed to separately itemize these split shift premium wages on PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on the pay stub provided to the employee, and it should be shown as a separate category such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc. DEFENDANTS failed to separately account for

the split shift premiums earned by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements.

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

DEFENDANTS' failure to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, DEFENDANTS violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Additionally, DEFENDANTS also violated California's overtime laws as to those NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an Alternative Workweek Schedule (AWS). Based on information and belief, DEFENDANTS adopted an Alternative Workweek Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected and/or implemented in accordance with the requirements of California law and/or DEFENDANTS failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws, including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

(C) Election Procedures Election procedures for the adoption and repeal of alternative

workweek schedules require the following: (1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another. (2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non- English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. (7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30

days after the announcement of the final results of the election. (8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek.

No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this paragraph shall be subject to Labor Code § 98 et seq.

Based on information and belief, PLAINTIFF alleges that DEFENDANTS failed to comply with the above procedures, and thus, failed to properly institute an alternative workweek for the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative workweek schedule. Based on information and belief, DEFENDANTS also failed to report the results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated. Moreover, to the extent there was an AWS that was properly adopted, DEFENDANTS violated California's overtime laws as to NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is required to work the reduced hours." See Section 3 of all applicable Wage Orders.

Based on information and belief, at times during NON-EXEMPT AGGRIEVED EMPLOYEES' respective employments by DEFENDANTS, NON-EXEMPT AGGRIEVED EMPLOYEES worked subject to an alternative work week schedule. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS, were sent home early and/or worked less hours than those that were scheduled under the AWS. On such shortened shifts, NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to overtime pay at 1.5 times the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid NON-EXEMPT AGGRIEVED EMPLOYEES their base rate for all hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section 1198. As such, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS were also deprived of all owed overtime wages when required to work shortened shifts.

This conduct results in violations of Labor Code sections 218.5, 510, 511, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage

Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statements.

Based on information and belief, DEFENDANTS failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all NON-EXEMPT

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, DEFENDANTS further failed and continue to fail to comply with Labor Code section 246, by failing to provide PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

DEFENDANTS unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid sick leave program.

On information and belief, PLAINTIFF alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

PLAINTIFF requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

DEFENDANTS violated and continue to violate Labor Code section 216 by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As DEFENDANTS failed to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

DEFENDANTS' failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFF and caused and continue to cause confusion to the NON-EXEMPT

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

AGGRIEVED EMPLOYEES over whether they received all wages owed to them. PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by DEFENDANTS' failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” Based on information and belief DEFENDANTS made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute’s provisions were violated.

Reporting Time Pay Violations:

Section 5 of all applicable IWC Wage Orders, provides as follows:

(A) Each 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. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Violation of California Day of Rest Law

Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" their employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, DEFENDANTS have and continue to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, DEFENDANTS failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code

section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, seating, suitable resting facilities, reporting time pay, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based in information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED

EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Violation of Labor Code Section 208:

Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when 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 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. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' personal cell phones/mobile devices, internet and/or data usage for work-related purposes, including but not limited to, to receive and respond to work-related messages and/or phone calls. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks and/or were otherwise required to use their personal cell phones/mobile devices for work purposes but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses. For example, DEFENDANTS required PLAINTIFF to use her personal cell phone/mobile device to download and use work-related applications, including but not limited to, employee timekeeping applications, however, DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for this business use of PLAINTIFF's personal cell phone/mobile device, in violation of California law, including but not limited to, California labor code section 2802.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform their assigned job duties and/or for the costs of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. For example, based on information and belief, at times NON-EXEMPT AGGRIEVED EMPLOYEES were required to drive between DEFENDANTS's various stores, facilities, offices and/or other locations and/or use their personal vehicles for other work purposes without receiving any and/or full reimbursement from DEFENDANTS for the vehicle-related expenses incurred in connection therewith. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to work remotely, including but not limited to, from their homes. As a result of working from home, NON-EXEMPT AGGRIEVED EMPLOYEES were required to use their home internet, electricity, and other

utilities in the discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue to lack a policy to reimburse employees who regularly increased utility expenses as a result of working from home. NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' increased utility and internet expenses were expenses for which DEFENDANTS were required to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES a reasonable percentage based on their required business use because said expenses were necessarily incurred by NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES as a direct consequence of the discharge of their duties of employment.

For example, PLAINTIFF was required to perform at least eight (8) hours of off-the-clock work in the form of including but not limited to, watching videos, reading training manuals, and/or taking tests usually if not always remotely from PLAINTIFF's home outside of scheduled shift times as required by DEFENDANTS, however, DEFENDANTS failed to provide PLAINTIFF with any reimbursement for business expenses PLAINTIFF incurred as a result of performing work remotely as required by DEFENDANTS, in violation of California law, including without limitation, California Labor Code section 2802.

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such

employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limit on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, DEFENDANTS ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code section 432.5.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to DEFENDANTS to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, DEFENDANTS knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

Upon information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Failure to Provide a Safe and Healthful Workplace:

Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the California Occupational Safety and Health Act (“Cal OSHA”), employers must maintain a safe and healthful place of employment.

Specifically, Labor Code section 6400, requires the following:

- (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein...

Labor Code section 6401 provides as follows:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6401.7 (a) provides as follows:

Every employer shall establish, implement, and maintain an effective injury prevention program.

Labor Code section 6402 prohibits the following:

No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Similarly, Labor Code section 6404 provides as follows:

No employer shall occupy or maintain any place of employment that is not safe and healthful.

In addition to the above, Labor Code section 6403 requires that employees provide safety devices to their employees. Labor Code section 6403 states:

No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Similarly, Labor Code section 6406(d) states the following:

No person shall do any of the following ... (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Finally, Labor Code section 6407 provides:

Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Moreover, Labor Code section 6409.6 sets forth the actions an employer (or representative of employer) must take within one business day of receiving notice of potential exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

At all relevant times, DEFENDANTS employed PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-6404, 6406, and 6407.

At all relevant times, DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and/or provide reasonable access to sanitation facilities (including, but not limited to, toilet facilities) and/or otherwise comply with sanitation standards reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401.

At all relevant times, DEFENDANTS had a policy and practice of failing to establish, implement, and/or maintain an effective injury prevention program, in violation of Labor Code section 6401.7.

At all relevant times DEFENDANTS had a policy and practice of requiring or permitting employees to go or be in in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402.

At all relevant times, DEFENDANTS had and have a policy and practice of failing or neglecting to: provide and use safety devices and/or provide reasonable access to sanitation facilities (e.g., toilet facilities) and/or otherwise comply with sanitation standards and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403.

PLAINTIFF is informed and believes and thereon alleges that these failures include, without limitation, failing to implement and/or effectively administer a proper injury and illness prevention program; failing to disinfect time clocks and/or other surfaces after use by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate protection equipment (e.g., face masks) to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate distance in working conditions between PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with adequate and readily accessible sanitation facilities, including but not limited to, washing facilities and/or toilet facilities and/or otherwise failing to comply with the sanitation standards as set forth in including but not limited to, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3364, 3365 and 3366.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide adequate and readily accessible sanitation facilities, and to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, a regular schedule for servicing, cleaning, and supplying for any sanitation facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets for use for each employee.

Based on further information and belief, to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, DEFENDANTS failed to maintain facilities that complied with California law, including without limitation, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3203, 3364, 3365 and 3366.

Moreover, at all relevant times, DEFENDANTS had a policy and practice of failing to give sufficient, adequate and proper notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES of the COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is informed and believes that

numerous employees contracted COVID-19 during the relevant time periods, but that DEFENDANTS failed to provide notice to employees. Based on further information and belief, DEFENDANTS do not or did not keep adequate records of written notifications required in subdivision (a) for a period of at least three years.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received notice of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and/or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state or local laws, including but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to notify PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of the subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19 related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

PLAINTIFF is informed and believes , and based thereon alleges that DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and 8397.4 by failing to provide

adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets for use by each employee.

PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS violated the Labor Code sections described herein, including without limitation, for failure to: furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19 pursuant to California and local laws.

Based on information and belief, DEFENDANTS failed to protect NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES from exposure to COVID-19 due to, including but not limited to, failing to maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address hazards related to the COVID-19 virus.

As such, DEFENDANTS failed to comply with the occupational safety and health standards, failed to do everything reasonably necessary to protect the health and safety of employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices necessary to maintain a safe and healthful workplace.

As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES and is subject to civil penalties.

Conclusion

DEFENDANTS have violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

Likewise, PLAINTIFF requests that the Division of Occupational Safety and Health investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, PLAINTIFF requests that the agency and division inform PLAINTIFF if they do not intend to investigate these violations so that PLAINTIFF may file a lawsuit with respect to the allegations discussed in this NOTICE.

If the LWDA and/or the Division of Occupational Safety and Health elect not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco, Esq.
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in cursive script that reads "Kiara Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "prelit@crosnerlegal.com" <prelit@crosnerlegal.com>

Wed, Jul 26, 2023 at 9:44 AM

7/26/2023

LWDA Case No. LWDA-CM-970891-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Nicole Gregory
Employer: Crossmark, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

7

EXHIBIT

8

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

SUMMARY OF ATTORNEY TIME / LODESTAR FEES

Total Attorneys' Hours: 260.2
Total Lodestar Fees: \$192,142.50

FIRM/ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
CROSNER LEGAL, PC				
Sepideh Ardestani	2010	100.5	\$700	\$70,350.00
Zachary Crosner	2010	75.0	\$800	\$60,000.00
Jamie Serb	2013	28.9	\$750	\$21,675.00
Nikki Trenner	2017	4.9	\$675	\$3,307.50
Branden Hamilton	2011	24.3	\$600	\$14,580.00
J. Kirk Donnelly	1995	9.5	\$900	\$8,550.0
Kim Anglin	2002	17.1	\$800	\$13,680.00
TOTAL**	--	260.2		\$192,142.50

***** This does not include anticipated attorney time to take the case through the approval process, attend the hearing and any supplemental hearings, provide supplemental briefings or declarations, work with defense counsel and settlement administrator regarding funding, distribution, tax forms, answer settlement group member questions, etc.***

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Crosner Legal Time Report Detailed
Sepideh Ardestani

Attorney	Hourly Rate	Time Spent	Fee	Description of Work Performed
Sepideh Ardestani	\$700	4.5	\$3,150	Review Defendant's responses to discovery; draft meet and confer letter
Sepideh Ardestani	\$700	1.5	\$1,050	Prepare Belaire West notice
Sepideh Ardestani	\$700	0.2	\$140	Email OC meet and confer letter and BW notice
Sepideh Ardestani	\$700	0.3	\$210	Emails with OC supplemental discovery responses to discovery
Sepideh Ardestani	\$700	0.4	\$280	Emails with OC re Motion to Stay and discovery
Sepideh Ardestani	\$700	0.4	\$280	Emails with OC re Motion to Stay
Sepideh Ardestani	\$700	2.5	\$1,750	Review Defendant's Motion to Stay; Research case law to prepare for Oppn
Sepideh Ardestani	\$700	1.2	\$840	Prepare stipulation and order to continue CMC hearing
Sepideh Ardestani	\$700	3.5	\$2,450	Research case law re Oppn to Motion to Stay
Sepideh Ardestani	\$700	8.0	\$5,600	Draft Oppn to Motion to Stay
Sepideh Ardestani	\$700	0.4	\$280	Emails with OC re joint CMC statement
Sepideh Ardestani	\$700	6.0	\$4,200	Draft Declaration of SA in support of Oppn to Motion to Stay; gather exhibits; prepare PO

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Sepideh Ardestani	\$700	1.5	\$1,050	Prepare joint report for 3/4/22 hearing
Sepideh Ardestani	\$700	1.0	\$700	Revise and finalize Oppn to Motion to Stay; Decl of SA; proposed order
Sepideh Ardestani	\$700	0.8	\$560	Review and revise joint report; emails with OC
Sepideh Ardestani	\$700	3.5	\$2,450	Review Defendant's Reply to Oppn to Motion to Stay; review case law; prepare for motion hearing
Sepideh Ardestani	\$700	2.5	\$1,750	Review court's tentative re Motion to Stay; prepare arguments and review case law
Sepideh Ardestani	\$700	0.8	\$560	Hearing on Motion to Stay
Sepideh Ardestani	\$700	2.0	\$1,400	Review arbitration agreement; emails with counsel
Sepideh Ardestani	\$700	1.5	\$1,050	Prepare individual damage model; call with OC
Sepideh Ardestani	\$700	1.5	\$1,050	Attend CMC hearing
Sepideh Ardestani	\$700	0.2	\$140	Emails with OC re individual settlement
Sepideh Ardestani	\$700	0.5	\$350	Case discussion with Attorney Jones
Sepideh Ardestani	\$700	8.0	\$5,600	Prepare Oppn to Motion to Compel Arbitration
Sepideh Ardestani	\$700	1.0	\$700	Call with OC re mediation; multiple emails with OC re mediators
Sepideh Ardestani	\$700	0.8	\$560	Prepare joint report re ADR review hearing
Sepideh Ardestani	\$700	9.0	\$6,300	Attend mediation
Sepideh Ardestani	\$700	6.0	\$4,200	Draft mediation brief
Sepideh Ardestani	\$700	10.0	\$7,000	Review informal discovery; revise mediation brief; collect exhibits; call with expert re damage model; call with client re mediation and

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

				additional facts
Sepideh Ardestani	\$700	5.0	\$3,500	Calls with OC re mediation; draft MOU; discussions re mediation with Attorneys Crosner and Serb
Sepideh Ardestani	\$700	3.5	\$2,450	Multiple calls/texts with clients re mediation preparation
Sepideh Ardestani	\$700	1.5	\$1,050	Review/revise Motion for PAGA approval
Sepideh Ardestani	\$700	1.5	\$1,050	Review/revise MOU
Sepideh Ardestani	\$700	2.5	\$1,750	Review/revise Settlement Agreement
Sepideh Ardestani	\$700	1.5	\$1,050	Multiple calls/text with clients re case update
Sepideh Ardestani	\$700	2.5	\$1,750	Calls/emails with Attorney Bhomick re Shellenbaum lawsuit; mediation; draft JPA
Sepideh Ardestani	\$700	3.0	\$2,100	Calls/emails with appellate counsel; review appellate motion; research
TOTAL:	--	100.5	\$70,350.00	--

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Crosner Legal Time Report Detailed
Zachary Crosner

Attorney	Hourly Rate	Time Spent	Fee	Description of Work Performed
Zachary Crosner	\$800	3.6	\$2,880	Review intake review & discussion about claims, case value, strategy
Zachary Crosner	\$800	3.1	\$2,480	Review of initial employment records & client produced records sent & analysis of potential entities and PAGA size, evaluation of arb agreement
Zachary Crosner	\$800	1.2	\$960	Follow up questions w/ client re. primary and additional claims
Zachary Crosner	\$800	2.5	\$2,000	Client updates
Zachary Crosner	\$800	0.8	\$800	Review/revisions of dismissal of labor commissioner case
Zachary Crosner	\$800	4.6	\$3,680	Review/revisions of PAGA Notice & 2810.3 Notice
Zachary Crosner	\$800	2.3	\$1,840	Research/analysis & discussions re. additional claims (i.e. seating, OSHA, etc.)
Zachary Crosner	\$800	1.8	\$2,880	Review of potential pre-existing/overlapping cases & discussion w/ counsel on that case
Zachary Crosner	\$800	0.5	\$400	Review defendant's answer to complaint
Zachary Crosner	\$800	0.8	\$800	Discussion re. early mediation and potential mediators
Zachary Crosner	\$800	4.3	\$3,440	Review/revisions of initial drafts of P's SRoggs and RFPs
Zachary Crosner	\$800	1.5	\$1,200	Review/revisions to plaintiff's proposed Belaire

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

				West Notice
Zachary Crosner	\$800	0.5	\$400	Review/revise joint status conference statement
Zachary Crosner	\$800	4.6	\$3,680	Review/analysis of defendant's responses to SRoggs and RFPs & discussions for MTCs
Zachary Crosner	\$800	2.5	\$2,000	Review D's motion to stay pending <i>Viking</i> and strategy discussion
Zachary Crosner	\$800	5.1	\$4,080	Review/revise opposition to D's motion to stay
Zachary Crosner	\$800	0.7	\$560	Review tentative on motion to stay and follow up discussion
Zachary Crosner	\$800	0.5	\$400	Review/revise joint status conference update
Zachary Crosner	\$800	3.8	\$3,040	Further analysis of client's individual claims & potential damages & related discussions
Zachary Crosner	\$800	3.9	\$2,880	Review of D's motion to compel arbitration & reply briefing
Zachary Crosner	\$800	5.5	\$3,120	Review/revise opposition to motion to compel
Zachary Crosner	\$800	3.4	\$2,720	Review of D's notice of appeal filing and strategy discussions/research
Zachary Crosner	\$800	1.5	\$1,200	Discussions w/ another counsel to handle potential wrongful term claims
Zachary Crosner	\$800	2.3	\$1,840	Discussions w/ appellate attorney to jointly handle appeal
Zachary Crosner	\$800	6.3	\$5,040	Review/analysis/discussions re. drafts of plaintiff's appellate briefing
Zachary Crosner	\$800	9.5	\$7,600	Mediation-related tasks (i.e. review mediation production, review/revise mediation brief, review/discuss damages analysis, valuation discussions, settlement discussions)

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Zachary Crosner	\$800	7.1	\$5,680	Discussions & tasks relating to marketing and reach outs for additional claimants/ reps; review of intake for additional claimants/ reps; discussions/analysis re. how to proceed
Zachary Crosner	\$800	2.3	\$1,840	Review/revise additional PAGA Notices for claimants/ reps
Zachary Crosner	\$800	2.5	\$2,000	Post-mediation analysis of overlapping case, discussion related thereto internally & w/ counsel
Zachary Crosner	\$800	3.6	\$2,880	Review/revise settlement agreement
Zachary Crosner	\$800	2.8	\$2,240	Review/revise motion for approval, accompanying documents
TOTAL:	--	75.0	\$60,000.00	--

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Crosner Legal Time Report Detailed
Jamie Serb

Attorney	Hourly Rate	Time Spent	Fee	Description of Work Performed
Jamie Serb	\$750	1.9	\$1,425	Review and discuss oppo to def's MTCA
Jamie Serb	\$750	0.1	\$75	Review MTCA ruling
Jamie Serb	\$750	0.2	\$150	Internal email discussion re: MTCA hearing
Jamie Serb	\$750	0.3	\$225	Internal email discussion re: MTCA ruling
Jamie Serb	\$750	0.1	\$75	Review notice of appeal
Jamie Serb	\$750	0.3	\$225	Internal discussion w/associate re: appeal
Jamie Serb	\$750	0.9	\$657	Internal discussion w/partners re: appeal
Jamie Serb	\$750	0.1	\$75	Review appeal initial docs filed
Jamie Serb	\$750	2.3	\$1,725	Review appellant's brief and appendix
Jamie Serb	\$750	0.9	\$657	Internal discussion re: Adolph and mediation
Jamie Serb	\$750	0.2	\$150	Internal discussion re: mediators
Jamie Serb	\$750	0.4	\$300	Internal meeting re: claims
Jamie Serb	\$750	0.2	\$150	Discussion re: stay of appeal pending mediation
Jamie Serb	\$750	0.3	\$225	Discussion re: new plaintiff
Jamie Serb	\$750	0.4	\$300	Review docs and intake for new plaintiff
Jamie Serb	\$750	0.1	\$75	Review mediation confidentiality agreement
Jamie Serb	\$750	1.9	\$1,425	Review informal discovery production

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Jamie Serb	\$750	2.1	\$1,575	Review mediation brief and analysis
Jamie Serb	\$750	9.0	\$6,750	Attend mediation
Jamie Serb	\$750	0.3	\$225	Review and discuss mediator's proposal
Jamie Serb	\$750	0.4	\$300	Review MOU and discuss internally
Jamie Serb	\$750	0.2	\$150	Review/discuss CMC statement in appellate case
Jamie Serb	\$750	0.2	\$150	Review final MOU draft
Jamie Serb	\$750	0.1	\$75	Review CMC statement in appellate case
Jamie Serb	\$750	0.2	\$150	discussion re vmail from court of appeal
Jamie Serb	\$750	2.3	\$1,725	Review settlement agreement
Jamie Serb	\$750	1.9	\$1,425	Internal discussion re settlement agreement
TOTAL:	--	28.9	\$21,675.00	--

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Crosner Legal Time Report Detailed
Branden Hamilton

Attorney	Hourly Rate	Time Spent	Fee	Description of Work Performed
Branden Hamilton	\$550	2.9	\$1,595	Review case file, research defendants, internal emails and telephone conferences re claims and defendants to name
Branden Hamilton	\$550	3.5	\$1,925	Draft PAGA notice
Branden Hamilton	\$550	3.8	\$2,090	Review file, review internal email exchanges re settlement terms/claims to include, draft amend complaint.
Branden Hamilton	\$550	.9	\$495	Draft stipulation to file amend compl and proposed order; emails with OC re amend complt and stip
TOTAL:	--	11.1	\$6,105	--

Crosner Legal Time Report Detailed
Nikki Trenner

Attorney	Hourly Rate	Time Spent	Fee	Description of Work Performed
Nikki Trenner	\$675	0.6	\$405	Review tentative ruling; emails with Attorney Ardestani
Nikki Trenner	\$675	2.2	\$1,485	Review MTCA, Oppn, Reply, Arb Agreement and supporting documents; prepare arguments for hearing
Nikki Trenner	\$675	2.1	\$1,417.50	Prepare for and attend MTCA hearing
TOTAL:	--	4.4	\$3,307.50	--

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Crosner Legal Time Report Detailed
J. Kirk Donnelly

Attorney	Hourly Rate	Time Spent	Fee	Description of Work Performed
J. Kirk Donnelly	\$900	9.5	\$8,550.00	Draft PAGA approval motion and supporting papers
TOTAL:	--	9.5	\$8,550.00	--

Crosner Legal Time Report Detailed
Kim Anglin

Attorney	Hourly Rate	Time Spent	Fee	Description of Work Performed
Kim Anglin	\$800	1.9	\$1,520	Review and discuss oppo to def's MTCA
Kim Anglin	\$800	0.1	\$80	Review MTCA ruling
Kim Anglin	\$800	0.2	\$160	Internal email discussion re: MTCA hearing
Kim Anglin	\$800	0.3	\$240	Internal email discussion re: MTCA ruling
Kim Anglin	\$800	0.1	\$80	Review notice of appeal
Kim Anglin	\$800	0.3	\$240	Internal discussion w/associate re: appeal
Kim Anglin	\$800	0.9	\$720	Internal discussion w/partners re: appeal
Kim Anglin	\$800	0.1	\$80	Review appeal initial docs filed
Kim Anglin	\$800	2.3	\$1,840	Review appellant's brief and appendix
Kim Anglin	\$800	0.9	\$720	Internal discussion re: Adolph and mediation

Sgontz v. Crossmark, Inc.
Orange County Superior Court Case No. 30-2021-01204377-CU-OE-CXC

Kim Anglin	\$800	0.2	\$160	Internal discussion re: mediators
Kim Anglin	\$800	0.4	\$320	Internal meeting re: claims
Kim Anglin	\$800	0.2	\$160	Discussion re: stay of appeal pending mediation
Kim Anglin	\$800	0.3	\$240	Discussion re: new plaintiff
Kim Anglin	\$800	0.4	\$320	Review docs and intake for new plaintiff
Kim Anglin	\$800	0.1	\$80	Review mediation confidentiality agreement
Kim Anglin	\$800	1.9	\$1,520	Review informal discovery production
TOTAL:	--	17.1	\$13,680	--