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8 CLARISSA JONES

9 **SUPERIOR COURT OF CALIFORNIA**

10 **IN AND FOR LOS ANGELES**

11
12 CLARISSA JONES, as an individual and on
13 all others similarly situated and aggrieved,

14 Plaintiff,

15 vs.

16
17 AVACEND CORPORATION., a Georgia
18 Corporation; RAMAN KANCHANA, an
19 Individual; and DOES 1 to 100, inclusive,

20 Defendants.
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CASE NO. **20STCV45262**

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff CLARISSA JONES, an individual on behalf of herself and all other aggrieved
2 employees similarly situated, hereby files this Complaint against Defendants AVACEND
3 CORPORATION, a Georgia Corporation, and Defendants RAMAN KANCHANA, an
4 Individual, and DOES 1 to 100, inclusive (collectively referred to herein as “Defendants”).
5 Plaintiff is informed and believes, and on the basis of that information and belief, allege as
6 follows:

7 **THE PARTIES**

8 1. Plaintiff CLARISSA JONES is, and at relevant times was, an individual domiciled in the
9 State of California and a citizen of the State of California who worked as a non-exempt field opts
10 installer for Defendants in the State of California.

11 2. Defendants AVACEND CORPORATION is a Georgia Corporation that, at all relevant
12 times, was authorized to do business within the State of California and is doing business in the
13 State of California.

14 3. On information and belief, Defendants RAMAN KANCHANA is an individual residing
15 in the State of California and is, and at all relevant times has been, the Chief Executive Officer,
16 Chief Financial Officer and Secretary of Defendants AVACEND CORPORATION and had
17 direct control and power over the working conditions and the violations at issue in this
18 Complaint.

19 4. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
20 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by
21 said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible
22 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to
23 reflect the true names and capacities of the Doe Defendants when such identities become known.

24 5. On information and belief, RAMAN KANCHANA devised and implemented the policies
25 at issue in this complaint and “caused” these violations as that term is used in Labor Code §
26 1197.1. Pursuant to Labor code § 1197.1, RAMAN KANCHANA is liable as a person who
27 “caused” the violations to occur.

28 6. AVACEND CORPORATION provides temporary staffing and personnel to businesses

1 throughout the United States.

2 7. Plaintiff is further informed and believes that, at all relevant times, each Defendants
3 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
4 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
5 interest of some or all of the other Defendants, and was engaged with some or all of the other
6 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
7 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
8 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendants
9 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
10 times, each Defendants knew or should have known about, authorized, ratified, adopted,
11 approved, controlled, aided and abetted the conduct of all other Defendants.

12 8. At all relevant times, Defendants were and are legally responsible for all of the unlawful
13 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are
14 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
15 respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
16 times undertaken as employees of Defendants, acting within the scope of their employment or
17 authority in all of the unlawful activities described herein.

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

21 **JURISDICTION AND VENUE**

22 10. This court possesses original subject matter jurisdiction over this matter. Venue is proper
23 in Los Angeles, California, because Defendants do business in Los Angeles, California, and some
24 of the complained of conduct occurred in this judicial district.

25 **FACTUAL ALLEGATIONS**

26 11. During the one-year and sixty-five day period preceding filing of this complaint, Plaintiff
27 and each of the similarly situated aggrieved employees were employed by Defendants as hourly
28 paid, non-exempt employees in the State of California. Defendants at all times exercised control

1 over Plaintiff and each of the similarly situated aggrieved employees, and suffered and/or
2 permitted them to work.

3 12. Plaintiff began working for Defendants as a non-exempt, hourly paid employee in August
4 2019, and continued working in that continued working in that capacity until September 25, 2019.
5 During her employment, Plaintiff was classified as a non-exempt employee.

6 13. Plaintiff typically worked 5 days per workweek with shifts lasting 8 to 9 hours. She was
7 compensated by Defendants bi-weekly, as set forth in her wage statements.

8 14. Plaintiff did not always receive timely, compliant thirty-minute meal periods. Plaintiff, at
9 times, was required to take late meal first meal periods and/or work through her meal periods, or
10 they would be interrupted/cut short due to the nature and constraints of her job duties of Plaintiff,
11 commentary from supervisors, among other reasons.

12 15. Defendants never once compensated Plaintiff a one-hour premium for her missed, late or
13 interrupted meal periods.

14 16. Defendants failed to maintain accurate and complete time keeping records of Plaintiff's
15 meal periods, including start and stop times.

16 17. Defendants implemented a policy and practice of automatically deducting thirty minutes
17 or one hour for Plaintiff's meal periods, despite having actual and/or constructive knowledge of
18 that Plaintiff did not receive timely, compliant, uninterrupted meal periods, resulting in
19 underpayment to Plaintiff of minimum wages and overtime pay.

20 18. Plaintiff did not always receive compliant, timely 10 minute rest periods every four hours
21 or major fraction thereof. Plaintiff, at times, was required to take late rest periods and/or work
22 through her rest periods, or they would be interrupted/cut short due to the nature and constraints
23 of her job duties of Plaintiff, commentary from supervisors, among other reasons.

24 19. Defendants never once compensated Plaintiff a one-hour premium for her missed, late or
25 interrupted rest periods.

26 20. Defendants AVACEND CORPORATION is a "temporary services employer" within the
27 meaning of Labor Code Section 201.3, and thus its employees' wages are due and payable no less
28 frequently than weekly. However, as described herein, Plaintiff was compensated bi-weekly, in

1 violation of Labor Code Section 201.3.

2 21. Defendants failed to provide paid sick leave to Plaintiff, further failing to put her on notice
3 of their paid sick leave rights—or thereby putting her entitlement to sick leave in a Labor Code
4 Section 2810.5 notice. In addition, Defendants failed to maintain accurate records of used sick
5 leave and the balance of paid sick leave left to Plaintiff throughout the relevant time period.
6 Additionally, Defendants failed to provide notice of the correct sick leave amount balance left for
7 Plaintiff, and thus affecting her intelligent exercise of her paid sick leave. But for this failure,
8 Plaintiff would have used her paid sick leave at least prior to their respective separation, for as on
9 several occasions thereafter, she would have been entitled to use the banked sick leave and earn
10 appropriate compensation. This illegal retention of paid sick leave is unlawful.

11 22. Plaintiff was required by Defendants to submit to an unlawful criminal and/or financial
12 background check as a condition of obtaining and/or holding employment in violation of Labor
13 Code Section 1024.5. Labor Code Section 432.7. Defendants also required Plaintiff to agree in
14 writing to a background check which failed to abide by the requirements set forth in CA Civil
15 Code §1786, et seq. and 15 U.S.C. § 1681, et seq., and thus was an unlawful background check.
16 By requiring Plaintiff to sign off on the illegal background checks, Defendants also violated
17 Labor Code Section 432.5 (stating that “no employer...shall require any employee or applicant
18 for employment to agree, in writing, to any term or condition which is known by such
19 employer...to be prohibited by law.”) Defendants also violated Labor Code Section 432.5, which
20 violations subject Defendants to civil penalties under the Labor Code, by requiring Plaintiff to
21 sign unlawful non-compete agreements as a condition of hire/maintaining employment.

22 23. Defendants failed to reimburse Plaintiff or all necessary business-related expenditures
23 incurred by Plaintiff in direct discharge of her duties, including but not limited to cell phone
24 expenses. Plaintiff was regularly required to use her personal cell phone to perform her job duties,
25 including but not limited to scheduling and coordinating with staff and supervisors, meetings,
26 conference calls, training, among other business-related activities.

27 24. Defendants also failed to pay all sick leave pay benefits owed under the law to Plaintiff.
28 Specifically, Defendants failed to incorporate non-discretionary renumerations paid to Plaintiff,

1 including but not limited to additional rates of pay/shift differentials and bonuses/incentive pays,
2 into the regular rate of pay for purposes of calculating the sick leave pay rate. Accordingly,
3 Defendants failure resulted in an underpayment of sick leave pay to Plaintiff.

4 25. During her employment, Plaintiff failed to receive accurate wage statements in
5 compliance with Labor Code section 226. Among other things, Plaintiff's paystubs did not
6 include: (1) the correct total hours that Plaintiff worked during each pay period; and (2) the
7 correct total gross and net wages.

8 26. Defendants failed to pay Plaintiff for all hours worked during her employment and upon
9 the separation of employment, including failing to pay Plaintiff for all hours worked as a result of
10 its thirty minute to one hour automatic deduction for meal periods, and by failing to pay Plaintiff
11 one hour meal and rest period premiums.

12 27. Plaintiff is informed and believes that Defendants engaged in these same unlawful
13 practices with regard to all of the similarly situated aggrieved employees.

14 28. Plaintiff brings her complaint under the Private Attorneys General Act of 2004, Labor
15 Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
16 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
17 employed by Defendants in the State of California as a non-exempt employee. This action is
18 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

19 29. During the period beginning one-year period preceding the filing of the required PAGA
20 notice with the Labor Workforce and Development Agency, and continuing through the present, as
21 alleged herein, Defendants violated Labor Code sections 201, 202, 203, 204, 210, 216, 218.5,
22 225.5, 226, 226.3, 226.7, 233. 234, 245, 246, 247, 247.5, 248, 248.5, 510, 512, 558, 558.1,
23 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802, 2810.5 and all
24 relevant sections of the applicable Wage Orders as to Plaintiff and all other similarly aggrieved
25 employees employed by Defendants who worked as "security" or a similarly situated position/job
26 classification however titled. These violations subject Defendants to civil penalties as set forth
27 in the foregoing statutes as well as other provisions of the Labor Code, including without
28 limitation Labor Code sections 203, 256, 210, 1174.5, 1197.1 and 2699.

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1 and must be paid double wages for all hours worked in excess of 12 per day, unless they are
2 exempt. As alleged herein, Plaintiff and the similarly situated aggrieved employees worked
3 overtime hours for which they were not compensated by Defendants as required by California
4 law. They were at times interrupted during their meal periods or required to work through them,
5 yet Defendants automatically deducted thirty minutes to one hour for these missed and/or
6 interrupted meal periods. Defendants owes Plaintiff and similarly situated aggrieved employees
7 overtime wages for this work where the addition of such hours would require payment at an
8 overtime rate.

9 35. Defendants' violations with respect to minimum wages and/or overtime wages, as alleged
10 herein, result in separate violations of Labor Code sections 1198 and 1199, and subject
11 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
12 sections 1197.1 and 2699. Each violation of each Labor Code section and Wage Order provision,
13 for each aggrieved employee, results in a separate civil penalty.

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

27 37. Plaintiff and similarly situated aggrieved employees regularly worked periods of more
28 than five in a workday without being provided proper mandatory thirty-minute, duty-free meal

1 periods. Upon information and belief, the similarly situated aggrieved employees did not receive
2 timely, compliant, uninterrupted thirty minute second meal periods for shifts in excess of ten
3 hours. Upon information and belief, Defendants failed to maintain a company meal period policy
4 compliant with California law, and also failed to maintain first or second meal period waiver
5 agreements compliant with California law. They were unable to avail themselves of such breaks
6 for various reasons, including, the pressures from their workloads and the lack of relief workers
7 available, commentary from superiors or no breaks at all. Per Defendants' illegal meal period
8 policy/practice, Plaintiff and similarly situated aggrieved employees were not always relieved of
9 their duties during meal periods. Defendants also failed to pay Plaintiff and similarly situated
10 aggrieved employees an additional hour of wages at their regular rates of pay for each workday a
11 meal period was not provided.

12 38. Defendants failed to provide Plaintiff and the similarly situated aggrieved employees with
13 all required meal periods, or with compensation in lieu thereof. In failing to provide all required
14 and fully compliant meal periods and/or failing to compensate for missed/non-compliant meal
15 periods at the correct regular rate of compensation, Defendants violated Labor Code sections
16 226.7, 512, and 1198-1199, and Wage Order 5-2001 (and all applicable wage orders), sections
17 11(A) and (C). These violations subject Defendants to civil penalties under Labor Code section
18 2699, and Wage Order 5-2001 (and all applicable wage orders), section 20. Each violation of
19 each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
20 separate civil penalty.

21 39. California law requires an employer to authorize or permit an employee to take a rest
22 period of ten minutes for every four hours worked, or major fraction thereof, and such rest
23 periods must be in the middle of the four-hour period insofar as practicable. If the employer fails
24 to provide any required rest periods, or fails to provide a fully compliant rest break of 10 minutes
25 wherein the employee is fully relieved of all duties and all employer control, the employer must
26 pay the employee one hour of pay at the employee's regular rate of compensation for each
27 workday the employer did not provide a legally required and/or fully compliant rest period.

28 40. Defendants employed policies and procedures that ensured Plaintiff and other similarly

1 situated aggrieved employees would not receive all legally required rest periods, as Defendants
2 did not authorize and permit all required rest periods in strict accordance to, and in compliance
3 with, the timing requirements of all applicable Wage Orders. Defendants similarly employed
4 policies and procedures that rendered rest periods non-compliant with the requirements of
5 California law by, inter alia, failing to relieve Plaintiff and similarly situated aggrieved employees
6 of all duties and all employer control. Similar to meal breaks, Plaintiff and the similarly situated
7 aggrieved employees were not always able to avail themselves of their rest breaks for various
8 reasons, including, the pressures from their workloads and the lack of relief workers available,
9 commentary from superiors or no breaks at all. Upon information and belief, per Defendants'
10 illegal rest period policy/practice, Plaintiff and similarly situated aggrieved employees were not
11 always relieved of their duties or permitted to leave the premises for purposes of taking rest
12 periods. Defendants further employed policies and procedures ensuring Plaintiff and similarly
13 situated aggrieved employees did not receive premium wages to compensate them for workdays
14 they did not receive all legally required and fully compliant rest periods.

15 41. In failing to provide all required and fully compliant rest breaks and/or failing to
16 compensate for missed/non-compliant rest breaks at the correct regular rate of compensation,
17 Defendants have violated Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-
18 2001 (and all applicable wage orders), section 12(A). These violations subject Defendants to civil
19 penalties under Labor Code section 2699, and Wage Order 5-2001 (and all applicable wage
20 orders), section 20. Each violation of each Labor Code section and Wage Order provision, for
21 each aggrieved employee, results in a separate civil penalty.

22 42. Labor Code § 2802 requires employers to indemnify employees for all necessary
23 expenditures incurred by employees in the discharge of their duties. Defendants required Plaintiff
24 and the similarly situated aggrieved employees to use personal cell phones to for scheduling,
25 coordination and communication throughout their shifts and/or prior to the start or after the close
26 of their shifts. Defendants did not reimburse Plaintiff or the similarly situated aggrieved
27 employees for using personal cell phones for work. In failing indemnify all business-related
28 expenses incurred by Plaintiff and the aggrieved employees, Defendants have violated Labor

1 Code section 2802. This violation subjects Defendants to civil penalties under Labor Code
2 sections 2802, 558, 558.1 and 2699. Each violation of each Labor Code section and Wage Order
3 provision, for each aggrieved employee, results in a separate civil penalty.

4 43. Labor Code section 226(a) provides, in relevant part, that “[a]n employer, semimonthly or
5 at the time of each payment of wages, shall furnish to her or her employee, either as a detachable
6 part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid
7 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
8 earned, (2) total hours worked by the employee . . . , (5) net wages earned, [and] (6) the inclusive
9 dates of the period for which the employee is paid . . . , (8) the name and address of the legal
10 entity that is the employer . . . , (9) all applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate by the employee”

12 44. Labor Code section 226(e) provides that “[a]n employee suffering injury as a result of a
13 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
14 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
15 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
16 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
17 an award of costs and reasonable attorney’s fees.

18 45. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of
19 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
20 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
21 for each violation in a subsequent citation, for which the employer fails to provide the employee a
22 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

23 46. Defendants knowingly and intentionally failed to provide Plaintiff and other similarly
24 situated aggrieved employees with proper, itemized wage statements as the wage statements
25 provided by Defendants do not accurately reflect, inter alia, gross wages earned, total hours
26 worked, net wages earned, all applicable hourly rates in effect during each pay period, all hours
27 worked at each applicable hourly rate.

28 47. Accordingly, Defendants have violated Labor Code sections 226(a) and/or 226(e) as

1 Plaintiff and all similarly aggrieved employees. These violations subject Defendants to civil
2 penalties under the Labor Code, including without limitation Labor Code sections 226, 226.3 and
3 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
4 employee, results in a separate civil penalty.

5 48. Labor Code section 204 requires that all earned wages must be paid to employees twice
6 during each calendar month. Defendants violated this section by failing to pay Plaintiff and
7 aggrieved employees an additional hour of pay for meal and rest periods not provided/valid, by
8 failing to compensate employees for all hours worked, including overtime hours worked, and by
9 failing to pay proper premium wage rates for all hours worked. These violations subject
10 Defendants to civil penalties under Labor Code section 210. Each violation results in a separate
11 civil penalty, for each aggrieved employee for each pay period during which the statute
12 provisions were violated.

13 49. California Labor Code section 201.3 requires temporary service employers to pay their
14 employees on a weekly basis. Defendants failed to comply with Labor Code section 201.3 by
15 compensating Plaintiff and other similarly situated aggrieved employees on a bi-weekly basis
16 instead of a weekly basis, in violation of California law. Defendants' violations of Labor Code
17 section 201.3 subject Defendants to civil penalties, including but not limited to the penalties set
18 forth in California Labor Code sections 201.3. Each violation results in a separate civil penalty,
19 for each aggrieved employee for each pay period during which the statutory provisions were
20 violated.

21 50. Defendants failed to pay Plaintiff and the similarly situated aggrieved employees all
22 wages that were due and owing during their employment; and, failed to Plaintiff and the similarly
23 situated aggrieved employees who are former employees all wages that were due and owing upon
24 termination or resignation. Among other things, Plaintiff and the similarly situated aggrieved
25 employees were not paid for the off the clock resulting, inter alia, from Defendants' meal break
26 auto-deduction, as described herein, and failing to compensate them one hour meal and rest
27 period premiums for late, missed or interrupted meal and rest breaks.

28 51. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time

1 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with
2 respect to employees who resign. For all aggrieved employees no longer employed by Defendants,
3 including Plaintiff, Defendants still have not paid such aggrieved employees all wages earned and
4 unpaid at the time of discharge as alleged herein. These violations subject Defendants to civil
5 penalties under the Labor Code, including without limitation Labor Code sections 203, 256 and
6 2699. Each violation results in a separate civil penalty, for each aggrieved employee for each pay
7 period during which the statutory provisions were violated.

8 52. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
9 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this
10 section by failing to pay Plaintiff and aggrieved employees for all hours worked at the proper
11 wage rate and by failing to pay Plaintiff and aggrieved employees an additional hour of pay for
12 each meal/rest period not provided/that was invalid. These violations subject Defendants to civil
13 penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
14 each aggrieved employee, for each pay period during which the statute provisions were violated.

15 53. California Labor Code section 223 makes it unlawful for an employer to secretly pay
16 wages lower than required by statute while purporting to pay legal wages. As described above,
17 Defendants willfully and systematically denied Plaintiff and other aggrieved employees minimum
18 wage compensation for all hours worked which resulted in the payment of less than statutorily
19 required wages to them. Defendants acted with the intent to deprive them of statutory wages,
20 including, but not limited to, overtime wages and minimum wages, to which they were entitled to
21 under California law.

22 54. Thus, Defendants paid Plaintiff and other aggrieved employees lower wages than those
23 they were entitled to while purporting that Plaintiff and other aggrieved employees were properly
24 paid. California law requires employers to keep "accurate and complete" payroll records showing,
25 among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 5-
26 2001, section 7, similarly requires employers to keep time records showing, inter alia, when the
27 employees begin and end each work period.

28 55. At all relevant times, Defendants have failed, and continues to fail, to keep the required

1 time records, as Defendants did not provide and/or record all of Plaintiff's and other similarly
2 aggrieved employees hours worked, as well as the start and stop times for meal periods, as
3 alleged herein. Defendants' failure to keep "accurate and complete" payroll records for Plaintiff
4 and other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
5 Order 5- 2001, section 7. These violations subject Defendants to civil penalties under the Labor
6 Code, including without limitation sections 1174.5 and 2699. Each violation of each Labor Code
7 section and Wage Order provision, for each aggrieved employee, results in a separate civil
8 penalty.

9 56. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
10 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
11 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
12 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants' violations with
13 respect to meal periods, rest periods, recordkeeping provisions, and minimum wages and/or
14 overtime wages, as alleged herein, result in separate violations of Labor Code sections 1198 and
15 1199, and subject Defendants to civil penalties under the Labor Code, including without
16 limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor Code section and
17 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

18 57. Defendants failed to provide paid sick leave to Plaintiff and similarly aggrieved
19 employees, further failing to put them on notice of their paid sick leave rights—or thereby putting
20 their entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Defendants
21 failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the
22 employee throughout the relevant time period. Notably, where an employer compensates an
23 employee with non-discretionary bonus pay (as Defendants did here), any sick leave/sick pay
24 calculation must incorporate the value of the non-discretionary bonuses; upon information and
25 belief, Defendants' sick leave/sick pay calculation did not. Additionally, Defendants failed to
26 provide notice of the correct sick leave amount balance left for Plaintiff and aggrieved employees,
27 and thus affecting their intelligent exercise of their paid sick leave. But for this failure, Plaintiff
28 and similarly aggrieved employees would have used their paid sick leave at least prior to their

1 respective separation, for as on several occasions thereafter, he or she would have been entitled to
2 use the banked sick leave and earn appropriate compensation. This illegal retention of paid sick
3 leave is unlawful and Plaintiff seeks all forms of injunctive relief, restitution, and declaratory
4 relief as permitted by California law, on behalf of herself and all aggrieved employees.

5 58. An Employer is required to provide paid sick days in accordance to Labor Code Section
6 245 through 248.5. Defendants failed to maintain accurate records documenting the hours worked
7 and paid sick days accrued and used by employees in violation of Labor Code Section 247.5,
8 permitting the presumption that Plaintiff was entitled to the maximum number of hours accruable
9 under this article at the time of her termination. Moreover, by not incorporating the additional
10 rates of pay/non-discretionary remunerations, including but not limited to additional rates of
11 pay/shift differentials and bonuses/incentive pays, into the sick leave rates of pay, Defendants
12 unlawfully retained and continue to retain paid sick leave that should have been paid and wasn't.
13 On information and belief, Plaintiff alleges that all of these practices were experienced and
14 continue to be experienced by other similarly aggrieved employees. Plaintiff requests all
15 appropriate relief under the PAGA and these statutes, including but not limited to the restitution
16 of earned paid sick leave pay that was not paid to the aggrieved employees due to Defendants'
17 sole failure to incorporate all non-discretionary remunerations/rates of pay into the regular rate for
18 calculating sick leave pay benefits as required by California law.

19 59. Accordingly, Defendants has violated Labor Code sections 233 and 234 as to Plaintiff and
20 all similarly aggrieved employees. These violations subject Defendants to civil penalties under
21 the Labor Code, including without limitation Labor Code Section 233 and 234 and 2699. Each
22 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
23 results in a separate civil penalty.

24 60. Under the provisions of PAGA and Labor Code sections 201, 202, 203, 204, 210, 216,
25 218.5, 225.5, 226, 226.3, 226.7, 233, 234, 245, 246, 247, 247.5, 248, 248.5, 510, 512, 558, 558.1,
26 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802, 2810.5 and all
27 applicable Wage Orders, as well as all interpretations of these laws by California Courts and
28 administrative bodies, as well as any other law that is enforceable through PAGA, Defendants are

1 liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the
2 relevant California Labor Code provisions listed herein, or for default PAGA penalties under
3 Labor Code Section 2699(f) for any violation of a Labor Code section without a specified civil
4 penalty.

5 61. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
6 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
7 Development Agency (“LWDA”) via electronic mail at PAGAfilings@dir.ca.gov and to
8 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
9 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
10 alleged violations.

11 62. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail
12 to the parties it intends to investigate the alleged violations within 65 days of the date of
13 Plaintiff’s written notice. As of the expiration of the statutory exhaustion period, the LWDA has
14 not provided the parties any notice of its intention to investigate Plaintiff’s claims on behalf of the
15 State of California and other similarly aggrieved employees. As of the filing of this Complaint,
16 Defendants have not responded to Plaintiff’s PAGA notice in an attempt to cure. Accordingly,
17 Plaintiff has exhausted all administrative remedies required by law.

18 63. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, Plaintiff
19 is entitled to recover civil penalties, costs, plus reasonable attorney’s fees and costs, all in an
20 amount to be proved.

21 **PRAYER**

22 WHEREFORE, Plaintiff prays for judgment against each Defendants, jointly and
23 severally, as follows:

- 24 1. For civil penalties according to proof;
- 25 2. For reasonable attorney’s fees and costs of suit; and
- 26 3. For such other and further relief as the Court deems just and proper.

27
28 Dated: November 25, 2020

CROSNER LEGAL, P.C.

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Attorneys for Plaintiff CLARISSA JONES

DEMAND FOR JURY TRIAL

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

Dated: November 25, 2020

CROSNER LEGAL, P.C.



Michael Crosner
Blake Jones
Zachary Crosner
Attorneys for Plaintiff CLARISSA JONES