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Superior Court of California
County of Los Angeles

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF LOS ANGELES COUNTY

LINDSEY LEONETTE on behalf of herself
and others similarly situated,

Plaintiff,

v.

SANTOS & SANTOS ENTERPRISE; LAILA
TANGONAN SANTOS; LOGISTIC HEALTH,
INC. and DOES 1-20, inclusive,

Defendants.

Case No: 20STCV42825

**FIRST-AMENDED CLASS ACTION
COMPLAINT:**

1. FAILURE TO PAY FOR ALL HOURS WORKED
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PAY MINIMUM WAGE
4. FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS
5. FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS
6. FAILURE TO REIMBURSE FOR BUSINESS-RELATED EXPENDITURES
7. FAILURE TO FURNISH WAGE STATEMENTS
8. WAITING TIME PENALTIES
9. UNFAIR BUSINESS PRACTICES
10. PENALTIES UNDER LABOR CODE § 210
11. PAGA VIOLATIONS

[AMOUNT DEMANDED EXCEEDS
\$25,000.00]

1 Plaintiffs Lindsey Leonette and Christopher Loeun (“Plaintiffs”), individuals, on behalf
2 of themselves and all others similarly situated, as defined below, hereby allege the following
3 facts and claims against Santos & Santos Enterprise (also doing business as Universal Wellness-
4 Immunization Network); Laila Tangonan Santos, an individual; and Logistic Health, Inc.
5 (“LHI”) (collectively “Defendants”), and respectfully request a trial by jury of all issues and
6 causes of action so triable.

7 **INTRODUCTION**

8 1. This class action complaint challenges Defendants’ past and ongoing unlawful
9 practices and policies on behalf of Plaintiffs and other similarly situated former and current
10 workers of Defendants, whose rights they violated and continue to violate under California law.

11 2. Specifically, as to Plaintiffs and others similarly situated workers, Defendants
12 have:

- 13 a. Failed and continue to fail to pay for all hours worked in violation of Labor
14 Code §§ 200, 223, 226, 500, 1197, 1198, and the applicable California Industrial
15 Welfare Commission Wage Orders (“Applicable Wage Orders”);
- 16 b. Willfully failed and continue to fail to pay minimum wage for all hours worked
17 in violation of Labor Code §§ 1194 and 1197, and the Applicable Wage Orders;
- 18 c. Failed and continue to fail to pay overtime time for all overtime hours worked
19 in violation of Labor Code §§ 510, 1194, and the Applicable Wage Orders;
- 20 d. Failed and continue to fail to authorize and/or permit meal periods in violation
21 of Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 22 e. Failed and continue to fail to authorize and/or permit rest periods in violation of
23 Labor Code §§ 226.7, and the Applicable Wage Orders;
- 24 f. Failed and continue to fail to reimburse for all business-related expenditures in
25 violation of Labor Code § 2802;
- 26 g. Failed and continue to fail to timely furnish itemized wage statements in
27 violation of Labor Code § 226, and the Applicable Wage Orders; and
28

1 h. Committed and continue to commit unfair business practices in violation of
2 Business & Professions Code § 17200, et seq.

3 3. The acts complained of herein occurred and will occur, at least in part, within the
4 time-period of four (4) years preceding the filing of the original Complaint, up to and through
5 the time of trial.

6 **JURISDICTION AND VENUE**

7 4. This Court has jurisdiction over Defendants because they are entities with
8 sufficient minimum contacts in California, and/or because they intentionally availed themselves
9 of the California market so as to render the exercise of jurisdiction over them by the California
10 courts consistent with traditional notions of fair play and justice.

11 5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since
12 at least some of the acts and omissions that are the subject matter of this Complaint occurred
13 herein and/or Defendants are found, maintain offices, transact business, exist and/or have an
14 agent herein.

15 **PARTIES**

16 6. At all relevant times mentioned herein, Plaintiffs were nurses and residents of
17 California.

18 7. Upon information and belief, Defendant Santos & Santos Enterprise is a staffing
19 agency to the healthcare industry and is, and at all times herein mentioned was, a California
20 company and duly authorized to do business herein.

21 8. Upon information and belief, Defendant Laila Tangonan Santos is, and at all
22 relevant times mentioned herein was, an owner, managing agent, Director, President, Officer
23 and/or Chief Executive Officer of Defendant Santos & Santos Enterprise, and responsible for its
24 operational, financial, personnel and/or administrative functions. Defendant Laila Tangonan
25 Santos is personally liable for the claims alleged in this Complaint pursuant to Labor Code §
26 558.1, which provides that persons acting on behalf of an employer, including owners, officers,
27 directors, and managing agents who violate or cause to be violated certain provisions of the Labor
28 Code, are personally liable for such violations.

1 9. Upon information and belief, Defendant Laila Tangonan Santos was, in part,
2 responsible for the creation, implementation, and/or granting final approval of the unlawful wage
3 and hour policies and/or practices alleged herein. As the owner and one of the managing agents
4 of Defendant Santos & Santos Enterprise, Defendant Laila Tangonan Santos also had substantial
5 discretionary authority over the decisions that ultimately determined the unlawful wage and hour
6 policies and/or practices alleged herein. Thus, Defendant Laila Tangonan Santos exercised
7 ultimate control over such unlawful conduct either: (1) by knowingly authorizing them, or (2)
8 with the knowledge that they were unlawful doing nothing to stop them, and thus ratifying them.

9 10. Upon information and belief, there is such a unity of interest and ownership
10 between Defendant Santos & Santos Enterprise and Defendant Laila Tangonan Santos that the
11 separate personalities between them do not exist; and that, if the acts complained of herein are
12 treated as those of Defendant Santos & Santos Enterprise alone, inequitable results will follow.

13 11. Upon information and belief, Defendant LHI is a company of unknown origin,
14 with its principle place of business in Wisconsin, and duly authorized to do business in California.
15 Defendant LHI is a healthcare company that, in part, owns and/or operates Covid-19 testing sites
16 throughout California.

17 12. Under California common law, Defendant LHI was a joint employer of Plaintiffs,
18 and other workers that Defendant Santos & Santos Enterprise assigned to work at its facilities in
19 California during the applicable recovery period, because Defendant LHI, along with other
20 Defendants, had the right to discipline or terminate these workers, with or without cause; required
21 them to work on its premises; required them to obtain its approval prior to taking time off work;
22 supervised and evaluated their work performance; and set their work schedules.

23 13. Defendant LHI is statutorily liable to the same group of workers under Labor
24 Code § 2810.3, since it qualifies as a “client employer” under said statute. Relevantly, Labor
25 Code § 2810.3(b) provides that “A client employer shall share with a labor contractor all civil
26 legal responsibility and civil liability for all workers supplied by that labor contractor for both of
27 the following: (1) The payment of wages.” Labor Code § 2810.3(f) further states: “The provisions
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of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.”

14. The true names or capacities, whether individual, associate or otherwise, of Does 1-20, inclusive, are unknown to Plaintiffs and, therefore, Plaintiffs sues these doe defendants by such fictitious names. Plaintiffs will seek leave of this Court to amend this Complaint to allege such names and capacities as soon as they are ascertained. Upon information and belief, each of these fictitiously named defendants is responsible in some manner for the occurrences alleged herein, and Plaintiffs’ injuries and damages as alleged and set forth herein were proximately caused by such fictitiously named defendants.

15. Upon information and belief, Plaintiffs allege that at all relevant times each of the defendants was the principal, agent, employer, employee, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and predecessor in interest of some or all of the other defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for the conduct of each of them.

16. Upon information and belief, Plaintiffs allege that each defendant acted pursuant to and within the scope of the relationships alleged above, that each defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and agreement to do the things alleged herein.

FACTUAL ALLEGATIONS

17. In or around May 2020, Defendant Santos & Santos Enterprise hired, assigned and paid Plaintiff Leonette to work as a nurse at various Covid-19 testing sites in California, including in Counties of Los Angeles, Ventura, and Orange, which were owned and/or operated by Defendant LHI.

18. In or around August 2020, Defendant Santos & Santos Enterprise hired, assigned and paid Plaintiff Loeun to work as a nurse at various Covid-19 testing sites in California,

1 including in Counties of Los Angeles and Orange, which were owned and/or operated by
2 Defendant LHI.

3 19. Plaintiffs regularly worked shifts lasting 12 hours. Plaintiffs no longer work for
4 Defendants.

5 20. Defendants had the right to control and direct, and did in fact, exercise control
6 and direction over Plaintiffs' job duties and working conditions. Among other forms of control
7 and direction, Defendants had the right to discipline or terminate them, with or without cause;
8 required them to work on premises; required them to obtain approval prior to taking time off
9 work; supervised and evaluated their work performance; and set their work schedule. Defendants
10 also supplied most of the instrumentalities, tools, and the place for Plaintiffs to do their work and
11 Plaintiffs had no personal investment in most of the equipment or materials required for them to
12 do their work. Thus, Plaintiffs was not free from the control and direction of Defendants in
13 connection with their work's performance—the first element that must be met under California's
14 ABC test in order for a worker to be lawfully classified as an independent contractor.

15 21. Defendants also cannot meet the second element of the ABC test because they
16 required Plaintiffs to perform work that was within their usual course of their business.

17 22. Defendants cannot meet the third element of the ABC test, either, since during the
18 time Plaintiffs worked for Defendants, they did not engage in an independently established
19 business, trade or occupation.

20 23. Defendants are required to satisfy all three elements of the ABC test in order to
21 lawfully classify Plaintiffs as an independent contractor. As alleged above, they cannot satisfy
22 any of them.

23 24. By misclassifying Plaintiffs as independent contractors in violation of California
24 law, Defendants deprived them of the rights, protections, and benefits afforded to non-exempt
25 employees in California, including, but not limited to, payment for all hours worked, minimum
26 wage, overtime pay, meal and rest breaks, reimbursement of all business-related expenses, and
27 furnishment of wage statements.
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1 25. As alleged above, Plaintiffs regularly worked 12-hour shifts, and at times worked
2 more than 40 hours a week. Yet, Defendants did not pay them daily or weekly overtime.

3 26. Additionally, when Defendants required Plaintiff Leonnete to travel away from
4 home to work at a facility, they did not, among other things, reimburse her for her mileage or pay
5 for her meals and incidentals expenses. Moreover, Defendants failed to pay Plaintiff Leonette for
6 her travel time to facilities that required her to commute long distances, such as the healthcare
7 facility in Oxnard, Ventura County.

8 27. Defendants also failed to pay Plaintiffs for time they spent reviewing and/or
9 completing competency/training/orientation courses (or modules) that were facility-specific.
10 Under California law, time spent attending these facility-specific
11 competency/training/orientation courses is compensable because, among other things, they are
12 not voluntary and are directly related to employees' jobs as they are designed to make them
13 handle their jobs more effectively as opposed to training them for another job or a new or
14 additional skill. Defendants also, at times, required Plaintiffs to participate in remote meetings
15 without compensation.

16 28. Upon information and belief, during the applicable recovery period, Defendants
17 have had a pattern and practice of misclassifying other workers they assign to work at facilities
18 inside California as "independent contractors," because they exercised control over them similar
19 to the kind of control they exercised over Plaintiffs; the workers were in the same line of business
20 as Defendants; and the workers did not engage in an independently established business, trade or
21 occupation.

22 29. By misclassifying these workers as "independent contractors," Defendants, as
23 they did with Plaintiffs, also deprived them of their rights, protections, and benefits afforded to
24 non-exempt employees under California law, including, but not limited to, payment for all hours
25 worked, minimum wage, overtime pay, meal and rest breaks, reimbursement of all business-
26 related expenses, and furnishment of wage statements.

1 **CLASS ALLEGATIONS**

2 30. This action is brought and may properly be maintained as a class action pursuant
3 to the provisions of Code of Civil Procedure § 382.

4 31. Plaintiffs reserve the right under California Rules of Court, Rule 1855 (b) to
5 amend or modify the description of the class, as defined below, with greater specificity or
6 division into subclasses or limitation to certain issues.

7 32. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
8 because there is a well-defined community of interest in the litigation and the proposed class is
9 easily ascertainable.

10 33. For the purposes of this Complaint, “Class Period” means any time from four
11 years prior to the filing of this Complaint until date of certification.

12 34. The putative class Plaintiff will seek to certify is currently composed of and
13 defined as follows:

14 All individuals Defendant Santos & Santos Enterprise classified as
15 “independent contractors” and assigned to work at any facility inside
16 California during the Class Period (the “Class”).

17 35. Plaintiffs seek to hold Defendants Santos & Santos Enterprise and Laila Tangonan
18 Santos liable for all damages suffered by the entire Class. In addition, Plaintiffs also seek to hold
19 LHI, along with the other Defendants, liable for all damages suffered by those members in the
20 Class who were assigned to work at its owned and/or operated facilities in California during the
21 Class Period.

22 36. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the Class
23 are so numerous that their individual joinder is impracticable. The precise number of class
24 members and their addresses will be known to Plaintiffs through discovery. Class members may
25 be notified of the pendency of this action by mail, electronic mail, the internet, or published
26 notice.

27 37. **Common Questions Predominate:** Common questions of law and fact exist as
28 to all members of the Class and predominate over any questions that affect only individual

members of the Class. The predominant common questions of law and fact, among other things, include, whether Defendants:

- a. Failed and continue to fail to pay for all hours worked in violation of Labor Code §§ 200, 223, 226, 500, 1197, 1198, and the Applicable Wage Orders;
- b. Willfully failed and continue to fail to pay minimum wage for all hours worked in violation of Labor Code §§ 1194 and 1197 and the Applicable Wage Orders;
- c. Failed and continue to fail to pay overtime time for all overtime hours worked in violation of Labor Code §§ 510, 1194, and the Applicable Wage Orders;
- d. Failed and continue to fail to authorize and/or permit meal periods in violation of Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- e. Failed and continue to fail to authorize and/or permit rest periods in violation of Labor Code §§ 226.7, and the Applicable Wage Orders;
- f. Failed and continue to fail to reimburse for all business-related expenditures in violation of Labor Code § 2802;
- g. Failed and continue to fail to timely furnish wage statements in violation of Labor Code § 226, and the Applicable Wage Orders; and
- h. Committed and continue to commit unfair business practices in violation of Business & Professions Code § 17200, et seq.

38. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Class they seeks to represent because they, as workers of Defendants, were exposed and subjected to the same unlawful business practices as the other members of the Class. Plaintiffs and the members of the Class they seek to represent sustained the same types of damages and losses.

39. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' attorneys have experience in employment and class action matters and may adequately represent the Class in this matter. Plaintiffs have no adverse interests to those in the Class.

40. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of the Class is impractical, class action treatment will permit a large number of similarly situated persons to

1 prosecute their common claims in a single forum simultaneously, efficiently and without the
2 unnecessary duplication of effort and expense that numerous individual actions would engender.
3 The relatively minor amount of individual damages in question coupled with the expenses and
4 burdens of individual litigation would make it difficult or impossible for individual members of
5 the Class to redress the wrongs done to them, while important public interests will be served by
6 addressing the matter as a class action. The cost to and burden on the court system of adjudication
7 of individualized litigation would be substantial and substantially more than the costs and
8 burdens of a class action. Individualized litigation would also present the potential for
9 inconsistent or contradictory judgments.

10 **FIRST CAUSE OF ACTION**

11 **[FAILURE TO PAY FOR ALL HOURS WORKED]**

12 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

13 41. Plaintiffs hereby incorporate by reference all other allegations contained in this
14 Complaint as though fully set forth herein.

15 42. During the applicable recovery period, Defendants were required to compensate
16 Plaintiffs and the Class for all hours worked and all pay promised pursuant to the Applicable
17 Wage Orders, and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198.

18 43. In violation of California law, Defendants have knowingly and willfully refused
19 to perform their obligations to compensate Plaintiffs and the Class for all their worked hours.

20 44. As a direct result, Plaintiffs and the Class have suffered, and continue to suffer,
21 substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid
22 wages, incurred expenses and attorneys' fees in seeking to compel Defendants to fully perform
23 their obligations under California law, all to their respective damage in amounts according to
24 proof at time of trial, but in amounts in excess of the jurisdiction of this Court.

25 45. Defendants' conduct described herein violates Labor Code §§ 200, 223, 226, 500,
26 1197, 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
27 226, 558, 1194, and 1194.2, Plaintiffs and the Class are entitled to recover damages for the
28

1 nonpayment of wages of all their worked hours, in addition to penalties, reasonable attorneys'
2 fees, expenses, and costs of suit.

3 **SECOND CAUSE OF ACTION**

4 **[FAILURE TO PAY OVERTIME]**

5 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

6 46. Plaintiffs hereby incorporate by reference all other allegations contained in this
7 Complaint as though fully set forth herein.

8 47. Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage
9 Orders at all times relevant hereto, Defendants were required to compensate Plaintiffs and the
10 Class for all worked overtime hours, which is calculated at one and one-half times the regular
11 rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Defendants
12 were also required to compensate Plaintiffs and the Class for all hours worked in excess of 12
13 hours in any workday at double their regular rate of pay.

14 48. Despite being misclassified as “independent contractors,” Plaintiffs, and the Class
15 are, in fact, non-exempt employees entitled to the protections of the Applicable Wage Orders,
16 and Labor Code §§ 200, 226, 500, 510, and 1198.

17 49. During the applicable recovery period, Plaintiffs and the Class worked in excess
18 of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek. However,
19 Defendants failed to properly compensate them for all their overtime and/or double-time hours
20 worked as required under the aforementioned laws.

21 50. As a direct result of aforementioned violations, Plaintiffs and the Class have
22 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
23 lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to
24 fully perform their obligations under state law, all to these employees' respective damage in
25 amounts according to proof at time of trial, but in amounts in excess of the jurisdiction of this
26 Court.

1 51. Pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, and 1194, Plaintiffs and
2 the Class are entitled to recover owed overtime and double-time compensation, as well as
3 penalties, interest, attorney's fees, and costs.

4 **THIRD CAUSE OF ACTION**

5 **[FAILURE TO PAY MINIMUM WAGE]**

6 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

7 52. Plaintiffs hereby incorporate by reference all other allegations contained in this
8 Complaint as though fully set forth herein.

9 53. Pursuant to Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer
10 to suffer or permit a California employee to work without paying wages at the proper minimum
11 wage for all time worked as required by the Applicable Wage Orders.

12 54. Pursuant to the Applicable Wage Orders “hours worked” include “the time during
13 which an employee is subject to the control of an employer, and includes all the time the
14 employee is suffered or permitted to work, whether or not required to do so.”

15 55. During the applicable recovery period, Plaintiffs and the Class suffered, were
16 permitted, and required to perform work for which they received no pay. As a direct and
17 proximate result of Defendants’ failure to pay Plaintiffs and the Class, they have been damaged
18 in the amount of the owed minimum wages.

19 56. The aforementioned acts by Defendants were undertaken with the intention of
20 depriving Plaintiffs and the Class of their property and/or legal rights and causing injury to them.

21 57. Pursuant to Labor Code §§ 1194 and 1194.2, Plaintiffs and the Class are entitled
22 to recover the full amount of unpaid minimum wages, liquidated damages in an equal amount,
23 interest and attorney's fees, all in a total amount subject to proof at time of trial.

24 **FOURTH CAUSE OF ACTION**

25 **[FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS]**

26 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

27 58. Plaintiffs hereby incorporate by reference all other allegations contained in this
28 Complaint as though fully set forth herein.

1 59. Labor Code § 226.7(a) provides, "No employer shall require any employee to
2 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
3 Commission."

4 60. Labor Code § 512(a) provides, in relevant part, that: "An employer may not
5 employ an employee for a work period of more than five hours per day without providing the
6 employee with a meal period of not less than 30 minutes, except that if the total work period per
7 day of the employee is no more than six hours, the meal period may be waived by mutual consent
8 of both the employer and employee. An employer may not employ an employee for a work period
9 of more than 10 hours per day without providing the employee with a second meal period of not
10 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
11 meal period may be waived by mutual consent of the employer and the employee only if the first
12 meal period was not waived."

13 61. During the applicable recovery period, Plaintiffs and the Class regularly worked
14 in excess of 5-hour work periods without being authorize and/or permitted to take a lawful meal
15 break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

16 62. During the applicable recovery period, Defendants have failed to pay Plaintiffs
17 and the Class premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks.
18 As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders,
19 Defendants are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 et seq.

20 63. Plaintiffs and the Class are entitled to recover one additional hour of pay at their
21 regular rate of compensation for each workday that a meal period was not authorized and/or
22 permitted. Plaintiffs and the Class are also entitled to their costs and reasonable attorneys' fees,
23 according to proof and to interest on all due and unpaid wages at the legal rate of interest.

24 **FIFTH CAUSE OF ACTION**

25 **[FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS]**

26 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

27 64. Plaintiffs hereby incorporate by reference all other allegations contained in this
28 Complaint as though fully set forth herein.

1 65. California Labor Code § 226.7(a) provides, "No employer shall require any
2 employee to work during any meal or rest period mandated by an applicable order of the
3 Industrial Welfare Commission."

4 66. The Applicable Wage Orders require that employers authorize and/or permit non-
5 exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of
6 each work period. The rest break is based on the total hours worked daily and must be at the
7 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
8 thereof.

9 67. Pursuant to Labor Code § 226.7, if an employer fails to authorize and/or permit
10 an employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay
11 the employee one additional hour of pay at the employee's regular rate of pay for each workday
12 that the rest break is not provided. The provisions of the Applicable Wage Orders state that the
13 rest break is defined as a "net" ten minutes, which means that the rest break begins when the
14 employee reaches an area away from the work area that is appropriate for rest.

15 68. During the applicable recovery period, Defendants did not authorize and/or permit
16 pay Plaintiffs and the Class to take lawful rest breaks and failed to pay them premium wages
17 mandated by Labor Code § 226.7(b). As a result of violations of Labor Code §§ 226.7 and the
18 Applicable Wage Orders, Defendants are liable for civil penalties pursuant to Labor Code §§ 558
19 and 2698 et seq.

20 69. Plaintiffs and the Class are entitled to recover one additional hour of pay at their
21 regular rate of compensation with Defendants for each workday that a rest break was not
22 authorized and/or permitted. Plaintiffs and the Class are also entitled to their costs and reasonable
23 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
24 interest.

1 **SIXTH CAUSE OF ACTION**

2 **[FAILURE TO REIMBURSE FOR BUSINESS-RELATED EXPENDITURES]**

3 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

4 70. Plaintiffs hereby incorporates by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 71. Labor Code § 2802 (a) provides, “An employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
9 even though unlawful, unless the employee, at the time of obeying the directions, believed them
10 to be unlawful.”

11 72. As alleged above, during the applicable recovery period, Defendants have had an
12 unlawful policy and/or practice of not reimbursing Plaintiffs and the Class for their incurred
13 business-related expenditures, including, but not limited to, their meal expenses when they work
14 away from home or expenses for the use of their mobile phones for work purposes.

15 73. As a direct and proximate result of Defendants’ failure to reimburse Plaintiffs
16 and the Class for their business-related expenditures, they have been injured in an amount to be
17 proven at trial.

18 74. Plaintiffs and the Class are entitled to recover reimbursement of their business-
19 related expenditures. Plaintiffs and the Class are also entitled to their costs and reasonable
20 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
21 interest.

22 **SEVENTH CAUSE OF ACTION**

23 **[FAILURE TO FURNISH WAGE STATEMENTS]**

24 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

25 75. Plaintiffs hereby incorporate by reference all other allegations contained in this
26 Complaint as though fully set forth herein.

27 76. This claim is brought under Labor Code § 226(a), which sets forth reporting
28 requirements for employers when paying wages, including that every employer shall furnish each

1 of his or her employees an itemized statement in writing showing, among other things, (1) gross
2 wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable
3 hourly rates in effect during the pay period, (5) the corresponding number of hours worked at
4 each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

11 78. Defendants knowingly and intentionally failed to provide Plaintiffs and the Class
12 with wage statements required by Labor Code § 226(a).

13 79. As a direct and proximate result of Defendants' conduct as alleged above,
14 Plaintiffs and the Class are each entitled to a civil penalty of \$50 for the initial pay period and
15 \$100 for each subsequent pay period in which Defendants violated the reporting requirements of
16 Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3,
17 Defendants are subject to a civil penalty in the amount of \$250 per employee per violation in an
18 initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the
19 employer fails to provide the employee a wage deduction statement or fails to keep the records
20 required under Labor Code § 226(a).

21 **EIGHTH CAUSE OF ACTION**

22 **[WAITING TIME PENALTIES]**

23 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

24 80. Plaintiffs hereby incorporate by reference all other allegations contained in this
25 Complaint as though fully set forth herein.

26 81. Labor Code §§ 201 and 202 require that an employer pay all wages due to an
27 employee after said employee is discharged or quits.
28

1 82. Labor Code § 203 provides a penalty for the willful failure to pay all wages due
2 to an employee who is discharged or quits. This penalty consists of an amount equal to the sum
3 of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in
4 an amount not to exceed the equivalent of 30 days' pay.

5 83. During the applicable recovery period, Plaintiffs and many members of the Class
6 have separated from Defendants as a result of being discharged or having voluntarily resigned
7 their employment.

8 84. While working for Defendants, Plaintiffs and the separated Class Members were
9 entitled to compensation for the violations set forth in this Complaint. But Defendants failed to
10 pay all wages due to them, by failing to pay for, among other things, all hours worked, overtime
11 and double-time, and premium wages for unlawful meal or rest breaks. Defendants are required
12 to compensate Plaintiffs and the separated Class Members for all their unpaid wages earned and
13 an additional penalty equal to the daily earnings of such employees up to an amount equal to
14 those owed for 30 days of work.

15 **NINTH CAUSE OF ACTION**

16 **[UNFAIR BUSINESS PRACTICES]**

17 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

18 85. Plaintiffs hereby incorporate by reference all other allegations contained in this
19 Complaint as though fully set forth herein.

20 86. Defendants have engaged in unfair business practices in California by practicing,
21 employing and utilizing the employment practices outlined in this Complaint by requiring their
22 drivers and other non-exempt employees to perform the labor complained of herein without
23 proper compensation. Defendants' utilization of such unfair business practices constitutes unfair
24 competition and provides an unfair advantage over their competitors.

25 87. Plaintiffs and the Class seek full restitution and disgorgement of monies, as
26 necessary and according to proof, to restore any and all monies withheld, acquired and/or
27 converted by Defendants by means of the unfair practices complained of herein.

1 88. Plaintiffs and the Class seek, on their own behalf and on behalf of the general
2 public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at
3 least in part, within the last four (4) years preceding the filing of the original complaint in this
4 action.

5 89. Upon information and belief, Plaintiffs allege that at all times herein mentioned
6 Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by
7 Business and Professions Code § 17200 et seq., including those set forth in the Complaint herein,
8 thereby depriving Plaintiffs and the Class, and other members of the general public the minimum
9 working condition standards and conditions due to them under the California labor laws and the
10 applicable Wage Orders as specifically described herein.

11 90. Plaintiffs and the Class are further entitled to and do seek both a declaration that
12 the above-described business practices are unfair, unlawful and/or fraudulent and injunctive
13 relief restraining Defendants from engaging in any of such business practices in the future. Such
14 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
15 irreparable injury in that Defendants will continue to violate these California laws, represented
16 by labor statutes and the wage orders, unless specifically ordered to comply with same. This
17 expectation of future violations will require current and future employees to repeatedly and
18 continuously seek legal redress in order to gain compensation to which they are entitled under
19 California law. Plaintiffs and the Class have no other adequate remedy at law to ensure future
20 compliance with the California labor laws and the Applicable Wage Orders alleged to have been
21 violated herein.

22 **TENTH CAUSE OF ACTION**

23 **[PENALTIES UNDER LABOR CODE § 210]**

24 **(Plaintiffs and the Class Against Defendants and Does 1-20)**

25 91. Plaintiffs hereby incorporate by reference all other allegations contained in this
26 Complaint as though fully set forth herein.

27 92. This claim is brought under Labor Code § 210, which relevantly provides:
28

(a) In 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, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

(b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3...

93. Labor Code § 204(a) also pertinently provides:

All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor 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...

94. As alleged above, during the applicable recovery period, Defendants failed to pay Plaintiffs and the Class all wages owed to this date. By failing to pay the wages owed to Plaintiffs and the Class on their regular paydays, Defendants violated Labor Code § 204(a), and thus owe penalties of \$100 for the initial violation and \$200 for each subsequent violation, plus 25 percent of the wages they withheld from Plaintiffs and the Class under Labor Code § 210.

ELEVENTH CAUSE OF ACTION

[PAGA VIOLATIONS]

(Plaintiff Leonette and Aggrieved Employees Against Defendants and Does 1-20)

95. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein.

96. Plaintiff Leonette and the members of the Class who worked during the applicable recovery period are aggrieved employees as defined in Labor Code § 2699(a). Plaintiff Leonette brings this cause on behalf of herself, and other aggrieved employees, who suffered the Labor Code violations alleged in this Complaint during the applicable recovery period.

97. Defendants committed and continue to commit violations of the Labor Code against Plaintiff Leonette and the aggrieved employees as alleged in this Complaint, including, but not limited to, the following:

a. Failure to reimburse for all incurred business-related travel expenditures in violation of Labor Code § 2802;

b. Failure to pay for all hours worked in violation of Labor Code §§ 200, 223, 226, 500, 1197, 1198, and the Applicable Wage Orders;

c. Failure to pay all overtime wages for all overtime hours worked in violation of Labor Code §§ 510 and 1194 and the Applicable Wage Orders;

d. Willful failure to pay minimum wage for all hours worked in violation of Labor Code §§ 1194 and 1197 and the Applicable Wage Orders;

e. Failure to authorize or permit meal periods in violation of Labor Code §§ 226.7, 512, and the Applicable Wage Orders;

f. Failure to authorize or permit rest periods in violation of Labor Code § 226.7, and the Applicable Wage Orders;

g. Failure to timely furnish itemized wage statements in violation of Labor Code § 226, and the Applicable Wage Orders;

h. Willful failure to pay, without abatement or reduction, all final wages owed in accordance with Labor Code §§ 201, 202, and in violation of Labor Code § 203; and

1 98. On October 1, 2020, Plaintiff sent a written notice to Defendants and the Labor
2 and Workforce Development Agency (“LWDA”) notifying them of the specific violations and
3 the facts and theories supporting those violations. More than 60 days have passed since the date
4 the notice was mailed to Defendants and LWDA. A true and correct copy of Plaintiff Leonette’s
5 written notice to Defendants and the LWDA is attached hereto as “Exhibit A,” which Plaintiff
6 Leonette incorporates by reference as though fully set forth herein. On November 17, 2020,
7 Plaintiff Leonette sent the LWDA and Defendants an amended notice, identifying and correcting
8 a clerical error in the original notice. A copy of Plaintiff Leonette’s amended notice is attached
9 hereto as “Exhibit B,” which she incorporates by reference as though fully set forth herein.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray
3 for relief and judgment against Defendants as follows:

4 1. Certification of this action as a class action on behalf of each of the Class alleged
5 in this Complaint;

6 2. For general damages, according to proof, on each cause of action for which such
7 damages are available;

8 3. For compensatory damages, according to proof, on each cause of action for which
9 such damages are available;

10 4. For consequential damages, according to proof, on each cause of action for which
11 such damages are available;

12 5. For restoration and restitution of lost wages, statutory penalties, and all other
13 remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;

14 6. For reimbursement of all incurred business-related expenditures;

15 7. For declaratory and injunctive relief as requested herein;

16 8. For prejudgment and post-judgment interest according to law;

17 9. For reasonable attorneys' fees incurred in this action on those causes of action for
18 which such fees are recoverable under the law;

19 10. For costs of suit incurred in this action;

20 11. Disgorgement of all gains unjustly gained by Defendants;

21 12. All penalties available under PAGA; and

22 13. Any other remedies, whether in law or equity, that the Court deems properly.

23 Dated: February 12, 2021

Respectfully submitted,

24 SHAKOURI LAW FIRM

25
26
27 By: Ashkan Shakouri

Ashkan Shakouri

Attorneys for Plaintiffs

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2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs demand a jury trial on issues triable to a jury.
4

5 Dated: February 12, 2021

Respectfully submitted,

6 SHAKOURI LAW FIRM
7
8

9 By: Ashkan Shakouri

10 Ashkan Shakouri

11 Attorneys for Plaintiffs
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EXHIBIT A

SHAKOURI LAW FIRM

Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor

Los Angeles, CA 90025

Tel: (310) 575-1827

Fax: (310) 575-1890

ash@shakourilawfirm.com

shakourilawfirm.com

October 1, 2020

Via E-filing:

California Labor & Workforce

Development Agency

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

Via Certified U.S. Mail:

Santos & Santos Enterprise

7213 Berne Street

Rosemead, CA 91770

Via Certified U.S. Mail:

Logistic Health, Inc.

328 Front Street South

La Crosse, WI 54601

Re: PAGA Notice Pursuant to California Labor Code § 2699

Claimant: Lindsey Leonette

Employer: Santos & Santos Enterprise & Logistic Health, Inc.

Dear Sir or Madam:

Claimant Lindsey Leonette (“Claimant”) has retained Ashkan Shakouri of Shakouri Law Firm to represent her, and all other aggrieved employees as that term is defined under Labor Code § 2699 (c)¹, for wage and hour claims against Santos & Santos Enterprise (“Santos”) and Logistic Health, Inc. (“LHI”), collectively referred to herein as “Employers.”

In or around May 2020, Santos hired, assigned and paid Claimant to work as a nurse at various Covid-19 testing sites in California, including in Counties of Los Angeles, Ventura, and

¹ Labor Code § 2699(c) defines an “aggrieved employee” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

Orange, which were owned and/or operated by LHI. Claimant regularly worked shifts lasting 12 hours. Claimant no longer works for Employers.

Under California common law, LHI was a joint employer of Claimant, because LHI, along with Santos, had the right to discipline or terminate Claimant and other Aggrieved Employees, with or without cause; required them to work on its premises; required them to obtain its approval prior to taking time off work; supervised and evaluated their work performance; and set their work schedule.

LHI is also statutorily liable to Claimant under Labor Code § 2810.3, since it qualifies as a “client employer” under said statute. Relevantly, Labor Code § 2810.3(b) provides that “A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following: (1) The payment of wages.” Labor Code § 2810.3(f) further states: “The provisions of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.”

The aggrieved employees Claimant seeks to represent consist of all individuals Santos classified as “independent contractors” and assigned to work at any facility inside California during the applicable recovery period (the “Aggrieved Employees”). Claimant seeks to hold Santos liable for all penalties owed to Claimant and *all* other Aggrieved Employees. Claimant seeks to hold both LHI and Santos liable for all penalties owed to Claimant and those other Aggrieved Employees who were assigned to work at LHI owned and/or operated facilities in California during the applicable recovery period.

Claimant was misclassified as an “independent contractor” in violation of California law. Employers cannot satisfy the first element that must be met under California’s ABC independent contractor test because Claimant was not free from their control and direction in connection with her work’s performance. As alleged above, Employers had the right to control and direct, and did in fact, exercise control and direction over Claimant’s job duties and working conditions. Among other forms of control and direction, Employers had the right to discipline or terminate her, with or without cause; required her to work on premises; required her to obtain approval prior to taking time off work; supervised and evaluated her work performance; and set her work schedule. Employers also supplied most of the instrumentalities, tools, and the place for Claimant to do her work and Claimant had no personal investment in most of the equipment or materials required for her to do her work.

Employers also cannot meet the second element of the ABC test because they required Claimant to perform work that was within their usual course of their business. Employers cannot meet the third element of the ABC test either, since during the time Claimant worked for Employers, she did not engage in an independently established business, trade or occupation. Employers are required to satisfy all three elements of the ABC test in order to lawfully classify Claimant as an independent contractor. They cannot satisfy any of them.

By unlawfully misclassifying Claimant as an “independent contractor,” Employers deprived her of the rights, protections, and benefits afforded to non-exempt employees in

California, including, but not limited to, payment for all hours worked, minimum wage, overtime pay, lawful meal and rest breaks, reimbursement of all business-related expenses, and furnishment of wage statements.

As alleged above, Claimant regularly worked 12-hour shifts and, at times, worked more than 40 hours a week. Yet, Employers did not pay her daily or weekly overtime. Additionally, when Employers required her to travel away from home to work at a facility, they did not, among other things, reimburse her for her mileage or pay for her meals and incidentals expenses.

Moreover, Employers failed to pay Claimant for her travel time to facilities that required her to commute long distances, such as the healthcare facility in Oxnard, Ventura County. In addition, Employers failed to pay Claimant for time she spent reviewing and/or completing competency/training/orientation courses (or modules) that were facility-specific. Under California law, time spent attending these facility-specific competency/training/orientation courses is compensable because, among other things, they are not voluntary and are directly related to employees' jobs as they are designed to make them handle their jobs more effectively as opposed to training them for another job or a new or additional skill.

Employers have had a pattern and practice of misclassifying other Aggrieved Employees they assign to work at facilities inside California as "independent contractors," because they exercised control over them similar to the kind of control they exercised over Claimant; the other Aggrieved Employees were in the same line of business as Employers; and the other Aggrieved Employees did not engage in an independently established business, trade or occupation.

By misclassifying other Aggrieved Employees as "independent contractors," Employers, as they did with Claimant, also deprived them of their rights, protections, and benefits afforded to non-exempt employees under California law, including, but not limited to, payment for all hours worked, minimum wage, overtime pay, meal and rest breaks, reimbursement of all business-related expenses, and furnishment of wage statements. Thus, other Aggrieved Employees suffered the same type of violations alleged by Claimant herein.

Employers have violated, and/or have caused to be violated, several Labor Code provisions and are therefore liable for civil penalties under Labor Code §§ 558 & 2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Employers' Failure to Pay for All Hours Worked

During the applicable recovery period, Employers were required to compensate Claimant and other Aggrieved Employees for all hours worked and all pay promised pursuant to the Applicable Wage Orders, and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198.

In violation of California law, Employers have knowingly and willfully refused to perform their obligations to compensate Claimant and other Aggrieved Employees for all their worked hours.

As alleged above, Employers also did not pay for Claimant and other Aggrieved Employees for mandatory facility-specific training or orientation time that were directly related to employees' jobs as they were designed to make them handle their jobs more effectively as opposed to training them for another job or a new or additional skill.

Upon information and belief, during the applicable recovery period, Employers also failed to pay Aggrieved Employees minimum wage by engaging in improper rounding of their work hours, and by not paying for pre-shift or post-shift activities, thus resulting in a shorting of their pay.

As a direct result, Claimant and other Aggrieved Employees have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid wages, incurred expenses and attorneys' fees in seeking to compel Employers to fully perform their obligations under California law, all to their respective damages.

Employers' conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197, 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194, and 1194.2, Claimant and other Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours, in addition to penalties, reasonable attorneys' fees, expenses, and costs of suit.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Pay Overtime

Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage Orders at all times relevant hereto, Employers were required to compensate Claimant and other Aggrieved Employees for all worked overtime hours, which is calculated at one and one-half times the regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Employers were also required to compensate Claimant and other Aggrieved Employees for all hours worked in excess of 12 hours in any workday at double their regular rate of pay.

Despite being misclassified as "independent contractors," Claimant and other Aggrieved Employees are, in fact, non-exempt employees entitled to the protections of the Applicable Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1198.

During the applicable recovery period, Claimant and other Aggrieved Employees worked in excess of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek. However, as alleged above, Employers failed to properly compensate them for all their overtime and/or double-time hours worked as required under the aforementioned laws.

As a direct result of aforementioned violations, Claimant and other Aggrieved Employees have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such

wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Employers to fully perform their obligations under state law, all to these employees' respective damage.

Pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, and 1194, Claimant and other Aggrieved Employees are entitled to recover owed overtime and double-time compensation, as well as penalties, interest, attorney's fees, and costs.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Pay Minimum Wage

Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable Wage Orders.

During the applicable recovery period, the Employers have had a policy and/or practice of not paying Claimant and other Aggrieved Employees minimum wage for their work. As alleged above, Employers also did not pay for Claimant and other Aggrieved Employees for mandatory facility-specific training or orientation time that were directly related to employees' jobs as they were designed to make them handle their jobs more effectively as opposed to training them for another job or a new or additional skill.

Upon information and belief, during the applicable recovery period, Employers also failed to pay Aggrieved Employees minimum wage by engaging in improper rounding of their work hours, and by not paying for pre-shift or post-shift activities, thus resulting in a shorting of their pay..

Pursuant to Labor Code §§ 1194 and 1194.2, Claimant and Aggrieved Employees are entitled to recover the full amount of unpaid minimum wages, liquidated damages in an equal amount, interest and attorney fees, expenses and costs of suit.

As a result of these ongoing violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Authorize and/or Permit Meal Breaks

Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

Labor Code § 512(a) provides, in relevant part, that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more

than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

During the applicable recovery period, Claimant and other Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

During the applicable recovery period, Employers have failed to pay Claimant and other Aggrieved Employees premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders, Employers are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a meal period was not authorized and/or permitted. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys’ fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these ongoing violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers’ Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, Employers had had policy and/or practice of not authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful rest breaks under California law.

California Labor Code § 226.7(a) provides, “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.” The applicable Wage Orders require that employers authorize or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with the applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the applicable Wage Orders state that the rest break is defined as a “net” ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

During the applicable recovery period, Employers did not authorize and/or permit Claimant and other Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b), due to, among other reasons, work overload and

understaffing at their jobsites. For instance, Claimant was allowed to take her lawful rest breaks only if there were no patients at the testing facility she was assigned to work. Santos further violated California law because, upon information and belief, as a staffing agency it failed to take necessary steps to ensure that its clients authorized and/or permitted the employees it placed at their facilities to take lawful rest breaks. Santos also failed to properly train Claimant and other Aggrieved Employees about California rest break laws.

Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation with Employers for each workday that a rest break was not authorized and/or permitted by Employers. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Reimburse for Business-Related Expenditures

Labor Code § 2802 (a) provides, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

As alleged above, during the applicable recovery period, Employers have had an unlawful policy and/or practice of not reimbursing Claimant and other Aggrieved Employees for their incurred business-related expenditures, including, but not limited to, their meal and mobile phone expenses.

As a direct and proximate result of Employers' failure to reimburse Claimant and other Aggrieved Employees for their business-related expenditures, they have been injured to their detriment.

Claimant and other Aggrieved Employees are entitled to recover reimbursement of their business-related expenditures. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Furnish Wage Statements

Labor Code § 226(a) sets forth reporting requirements for employers when paying wages, including that every employer shall furnish each of his or her employees an itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable hourly rates in effect during the pay period, (5)

the corresponding number of hours worked at each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

Employers knowingly and intentionally failed to provide Claimant and the Aggrieved Employees with wage statement statements required by Labor Code § 226(a).

As a direct and proximate result of Employers' conduct as alleged above, Claimant and the Aggrieved Employees are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which Employers violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Employers are subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required under Labor Code § 226(a).

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Pay All Wages Upon Separation

Labor Code §§ 201 and 202 require that an employer pay all wages due to an employee after said employee is discharged or quits. Labor Code § 203 provides a penalty for the willful failure to pay all wages due to an employee who is discharged or quits. This penalty consists of an amount equal to the sum of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in an amount not to exceed the equivalent of 30 days' pay.

During the applicable recovery period, Claimant and some of the Aggrieved Employees have separated from Employers as a result of being discharged or having voluntarily resigned their employment. While employed by Employers, Claimant and the separated Aggrieved Employees were not paid all wages owed to them under California law, as alleged herein.

Employers are required to compensate Claimant and the separated Aggrieved Employees all their unpaid wages, and an additional penalty equal to their daily earnings up to an amount equal to those owed for 30 days of work.

As a result of these ongoing violations, Employers liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Violation of Labor Code § 210

As alleged above, during the applicable recovery period, Employers failed to pay Claimant and other Aggrieved Employees wages owed to them to this date. By failing to pay wages on their regular paydays, Employers violated Labor Code § 204(a), and thus owes penalties under Labor Code § 210.

Labor Code § 210 specifically provides that every person who fails to pay the wages of an employee in a timely manner (pursuant to Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code § 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, \$100 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Provide Required Written Notice Under Labor Code § 2810.5

Under Labor Code § 2810.5, every employer at the time of hiring must provide its employees a "written notice" that contains the information required under the statute. Employers did not provide such required written notice to Claimant, and upon information and belief, failed to provide said notice to other Aggrieved Employees.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Penalties Sought

Without limitation, Claimant and other Aggrieved Employees will further seek any and all penalties and underpaid wages under Labor Code § 558 and PAGA. This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a)

of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Conclusion

Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court on behalf of herself and other Aggrieved Employees.

Respectfully Submitted,

Ashkan Shakouri

Ashkan Shakouri
Attorney for Claimant and all other
Aggrieved Employees

EXHIBIT B

SHAKOURI LAW FIRM

Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor

Los Angeles, CA 90025

Tel: (310) 575-1827

Fax: (310) 575-1890

ash@shakourilawfirm.com

shakourilawfirm.com

November 17, 2020

Via E-filing:

California Labor & Workforce

Development Agency

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

Via Certified U.S. Mail:

Santos & Santos Enterprise

7213 Berne Street

Rosemead, CA 91770

Via Certified U.S. Mail:

Logistics Health, Inc.

328 Front Street South

La Crosse, WI 54601

Re: PAGA Notice Pursuant to California Labor Code § 2699

Claimant: Lindsey Leonette

Employer: Santos & Santos Enterprise & Logistics Health, Inc.

Case No.: LWDA-CM-808317-20

Dear Sir or Madam:

Claimant Lindsey Leonette ("Claimant") hereby amends her October 1, 2020 PAGA Notice, a copy of which is attached hereto as "Exhibit A," in order to correct the name of one of the Employers. The correct name is Logistics Health, Inc., not "Logistic Health, Inc." as incorrectly identified in Claimant's original PAGA Notice.

Respectfully Submitted,

Ashkan Shakouri

Ashkan Shakouri

Attorney for Claimant and all other
Aggrieved Employees

EXHIBIT A

SHAKOURI LAW FIRM

Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor

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October 1, 2020

Via E-filing:

California Labor & Workforce

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455 Golden Gate Avenue, 9th Floor

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Via Certified U.S. Mail:

Santos & Santos Enterprise

7213 Berne Street

Rosemead, CA 91770

Via Certified U.S. Mail:

Logistic Health, Inc.

328 Front Street South

La Crosse, WI 54601

Re: PAGA Notice Pursuant to California Labor Code § 2699

Claimant: Lindsey Leonette

Employer: Santos & Santos Enterprise & Logistic Health, Inc.

Dear Sir or Madam:

Claimant Lindsey Leonette (“Claimant”) has retained Ashkan Shakouri of Shakouri Law Firm to represent her, and all other aggrieved employees as that term is defined under Labor Code § 2699 (c)¹, for wage and hour claims against Santos & Santos Enterprise (“Santos”) and Logistic Health, Inc. (“LHI”), collectively referred to herein as “Employers.”

In or around May 2020, Santos hired, assigned and paid Claimant to work as a nurse at various Covid-19 testing sites in California, including in Counties of Los Angeles, Ventura, and

¹ Labor Code § 2699(c) defines an “aggrieved employee” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

Orange, which were owned and/or operated by LHI. Claimant regularly worked shifts lasting 12 hours. Claimant no longer works for Employers.

Under California common law, LHI was a joint employer of Claimant, because LHI, along with Santos, had the right to discipline or terminate Claimant and other Aggrieved Employees, with or without cause; required them to work on its premises; required them to obtain its approval prior to taking time off work; supervised and evaluated their work performance; and set their work schedule.

LHI is also statutorily liable to Claimant under Labor Code § 2810.3, since it qualifies as a “client employer” under said statute. Relevantly, Labor Code § 2810.3(b) provides that “A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following: (1) The payment of wages.” Labor Code § 2810.3(f) further states: “The provisions of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.”

The aggrieved employees Claimant seeks to represent consist of all individuals Santos classified as “independent contractors” and assigned to work at any facility inside California during the applicable recovery period (the “Aggrieved Employees”). Claimant seeks to hold Santos liable for all penalties owed to Claimant and *all* other Aggrieved Employees. Claimant seeks to hold both LHI and Santos liable for all penalties owed to Claimant and those other Aggrieved Employees who were assigned to work at LHI owned and/or operated facilities in California during the applicable recovery period.

Claimant was misclassified as an “independent contractor” in violation of California law. Employers cannot satisfy the first element that must be met under California’s ABC independent contractor test because Claimant was not free from their control and direction in connection with her work’s performance. As alleged above, Employers had the right to control and direct, and did in fact, exercise control and direction over Claimant’s job duties and working conditions. Among other forms of control and direction, Employers had the right to discipline or terminate her, with or without cause; required her to work on premises; required her to obtain approval prior to taking time off work; supervised and evaluated her work performance; and set her work schedule. Employers also supplied most of the instrumentalities, tools, and the place for Claimant to do her work and Claimant had no personal investment in most of the equipment or materials required for her to do her work.

Employers also cannot meet the second element of the ABC test because they required Claimant to perform work that was within their usual course of their business. Employers cannot meet the third element of the ABC test either, since during the time Claimant worked for Employers, she did not engage in an independently established business, trade or occupation. Employers are required to satisfy all three elements of the ABC test in order to lawfully classify Claimant as an independent contractor. They cannot satisfy any of them.

By unlawfully misclassifying Claimant as an “independent contractor,” Employers deprived her of the rights, protections, and benefits afforded to non-exempt employees in

California, including, but not limited to, payment for all hours worked, minimum wage, overtime pay, lawful meal and rest breaks, reimbursement of all business-related expenses, and furnishment of wage statements.

As alleged above, Claimant regularly worked 12-hour shifts and, at times, worked more than 40 hours a week. Yet, Employers did not pay her daily or weekly overtime. Additionally, when Employers required her to travel away from home to work at a facility, they did not, among other things, reimburse her for her mileage or pay for her meals and incidentals expenses.

Moreover, Employers failed to pay Claimant for her travel time to facilities that required her to commute long distances, such as the healthcare facility in Oxnard, Ventura County. In addition, Employers failed to pay Claimant for time she spent reviewing and/or completing competency/training/orientation courses (or modules) that were facility-specific. Under California law, time spent attending these facility-specific competency/training/orientation courses is compensable because, among other things, they are not voluntary and are directly related to employees' jobs as they are designed to make them handle their jobs more effectively as opposed to training them for another job or a new or additional skill.

Employers have had a pattern and practice of misclassifying other Aggrieved Employees they assign to work at facilities inside California as "independent contractors," because they exercised control over them similar to the kind of control they exercised over Claimant; the other Aggrieved Employees were in the same line of business as Employers; and the other Aggrieved Employees did not engage in an independently established business, trade or occupation.

By misclassifying other Aggrieved Employees as "independent contractors," Employers, as they did with Claimant, also deprived them of their rights, protections, and benefits afforded to non-exempt employees under California law, including, but not limited to, payment for all hours worked, minimum wage, overtime pay, meal and rest breaks, reimbursement of all business-related expenses, and furnishment of wage statements. Thus, other Aggrieved Employees suffered the same type of violations alleged by Claimant herein.

Employers have violated, and/or have caused to be violated, several Labor Code provisions and are therefore liable for civil penalties under Labor Code §§ 558 & 2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Employers' Failure to Pay for All Hours Worked

During the applicable recovery period, Employers were required to compensate Claimant and other Aggrieved Employees for all hours worked and all pay promised pursuant to the Applicable Wage Orders, and Labor Code §§ 200, 223, 226, 500, 510, 1197 and 1198.

In violation of California law, Employers have knowingly and willfully refused to perform their obligations to compensate Claimant and other Aggrieved Employees for all their worked hours.

As alleged above, Employers also did not pay for Claimant and other Aggrieved Employees for mandatory facility-specific training or orientation time that were directly related to employees' jobs as they were designed to make them handle their jobs more effectively as opposed to training them for another job or a new or additional skill.

Upon information and belief, during the applicable recovery period, Employers also failed to pay Aggrieved Employees minimum wage by engaging in improper rounding of their work hours, and by not paying for pre-shift or post-shift activities, thus resulting in a shorting of their pay.

As a direct result, Claimant and other Aggrieved Employees have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such unpaid wages, incurred expenses and attorneys' fees in seeking to compel Employers to fully perform their obligations under California law, all to their respective damages.

Employers' conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197, 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194, and 1194.2, Claimant and other Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours, in addition to penalties, reasonable attorneys' fees, expenses, and costs of suit.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Pay Overtime

Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage Orders at all times relevant hereto, Employers were required to compensate Claimant and other Aggrieved Employees for all worked overtime hours, which is calculated at one and one-half times the regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Employers were also required to compensate Claimant and other Aggrieved Employees for all hours worked in excess of 12 hours in any workday at double their regular rate of pay.

Despite being misclassified as "independent contractors," Claimant and other Aggrieved Employees are, in fact, non-exempt employees entitled to the protections of the Applicable Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1198.

During the applicable recovery period, Claimant and other Aggrieved Employees worked in excess of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek. However, as alleged above, Employers failed to properly compensate them for all their overtime and/or double-time hours worked as required under the aforementioned laws.

As a direct result of aforementioned violations, Claimant and other Aggrieved Employees have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such

wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Employers to fully perform their obligations under state law, all to these employees' respective damage.

Pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, and 1194, Claimant and other Aggrieved Employees are entitled to recover owed overtime and double-time compensation, as well as penalties, interest, attorney's fees, and costs.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Pay Minimum Wage

Pursuant to Labor Code §§ 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable Wage Orders.

During the applicable recovery period, the Employers have had a policy and/or practice of not paying Claimant and other Aggrieved Employees minimum wage for their work. As alleged above, Employers also did not pay for Claimant and other Aggrieved Employees for mandatory facility-specific training or orientation time that were directly related to employees' jobs as they were designed to make them handle their jobs more effectively as opposed to training them for another job or a new or additional skill.

Upon information and belief, during the applicable recovery period, Employers also failed to pay Aggrieved Employees minimum wage by engaging in improper rounding of their work hours, and by not paying for pre-shift or post-shift activities, thus resulting in a shorting of their pay..

Pursuant to Labor Code §§ 1194 and 1194.2, Claimant and Aggrieved Employees are entitled to recover the full amount of unpaid minimum wages, liquidated damages in an equal amount, interest and attorney fees, expenses and costs of suit.

As a result of these ongoing violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Authorize and/or Permit Meal Breaks

Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

Labor Code § 512(a) provides, in relevant part, that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more

than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

During the applicable recovery period, Claimant and other Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

During the applicable recovery period, Employers have failed to pay Claimant and other Aggrieved Employees premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders, Employers are liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a meal period was not authorized and/or permitted. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys’ fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these ongoing violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers’ Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, Employers had had policy and/or practice of not authorizing and/or permitting Claimant and other Aggrieved Employees to take lawful rest breaks under California law.

California Labor Code § 226.7(a) provides, “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.” The applicable Wage Orders require that employers authorize or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with the applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the applicable Wage Orders state that the rest break is defined as a “net” ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

During the applicable recovery period, Employers did not authorize and/or permit Claimant and other Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b), due to, among other reasons, work overload and

understaffing at their jobsites. For instance, Claimant was allowed to take her lawful rest breaks only if there were no patients at the testing facility she was assigned to work. Santos further violated California law because, upon information and belief, as a staffing agency it failed to take necessary steps to ensure that its clients authorized and/or permitted the employees it placed at their facilities to take lawful rest breaks. Santos also failed to properly train Claimant and other Aggrieved Employees about California rest break laws.

Claimant and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation with Employers for each workday that a rest break was not authorized and/or permitted by Employers. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Reimburse for Business-Related Expenditures

Labor Code § 2802 (a) provides, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

As alleged above, during the applicable recovery period, Employers have had an unlawful policy and/or practice of not reimbursing Claimant and other Aggrieved Employees for their incurred business-related expenditures, including, but not limited to, their meal and mobile phone expenses.

As a direct and proximate result of Employers' failure to reimburse Claimant and other Aggrieved Employees for their business-related expenditures, they have been injured to their detriment.

Claimant and other Aggrieved Employees are entitled to recover reimbursement of their business-related expenditures. Claimant and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Furnish Wage Statements

Labor Code § 226(a) sets forth reporting requirements for employers when paying wages, including that every employer shall furnish each of his or her employees an itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable hourly rates in effect during the pay period, (5)

the corresponding number of hours worked at each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

Employers knowingly and intentionally failed to provide Claimant and the Aggrieved Employees with wage statement statements required by Labor Code § 226(a).

As a direct and proximate result of Employers' conduct as alleged above, Claimant and the Aggrieved Employees are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which Employers violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Employers are subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required under Labor Code § 226(a).

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Pay All Wages Upon Separation

Labor Code §§ 201 and 202 require that an employer pay all wages due to an employee after said employee is discharged or quits. Labor Code § 203 provides a penalty for the willful failure to pay all wages due to an employee who is discharged or quits. This penalty consists of an amount equal to the sum of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in an amount not to exceed the equivalent of 30 days' pay.

During the applicable recovery period, Claimant and some of the Aggrieved Employees have separated from Employers as a result of being discharged or having voluntarily resigned their employment. While employed by Employers, Claimant and the separated Aggrieved Employees were not paid all wages owed to them under California law, as alleged herein.

Employers are required to compensate Claimant and the separated Aggrieved Employees all their unpaid wages, and an additional penalty equal to their daily earnings up to an amount equal to those owed for 30 days of work.

As a result of these ongoing violations, Employers liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Violation of Labor Code § 210

As alleged above, during the applicable recovery period, Employers failed to pay Claimant and other Aggrieved Employees wages owed to them to this date. By failing to pay wages on their regular paydays, Employers violated Labor Code § 204(a), and thus owes penalties under Labor Code § 210.

Labor Code § 210 specifically provides that every person who fails to pay the wages of an employee in a timely manner (pursuant to Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code § 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, \$100 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employers' Failure to Provide Required Written Notice Under Labor Code § 2810.5

Under Labor Code § 2810.5, every employer at the time of hiring must provide its employees a "written notice" that contains the information required under the statute. Employers did not provide such required written notice to Claimant, and upon information and belief, failed to provide said notice to other Aggrieved Employees.

As a result of these violations, Employers are liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Penalties Sought

Without limitation, Claimant and other Aggrieved Employees will further seek any and all penalties and underpaid wages under Labor Code § 558 and PAGA. This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a)

of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Conclusion

Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court on behalf of herself and other Aggrieved Employees.

Respectfully Submitted,

Ashkan Shakouri

Ashkan Shakouri
Attorney for Claimant and all other
Aggrieved Employees

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
4

5 I am employed in the County of Los Angeles, State of California, I am over the age of 18 and
6 not a party to the within action; my business address is 11601 Wilshire Boulevard, Fifth Floor, Los
7 Angeles, California 90025. I served the foregoing document(s) described as:

8 **FIRST-AMENDED CLASS ACTION COMPLAINT**

9 X BY ELECTRONIC TRANSMISSION ONLY VIA CALIFORNIA RULES OF COURT,
10 EMERGENCY RULE 12: I electronically caused to be served the foregoing document on all interested
11 parties in this action via email only. The document will be deemed served on the date it was emailed.

12 Addressed to:

13 Andrew M. Paley
14 apaley@seyfarth.com
15 Jonathan L. Brophy
16 jbrophy@seyfali.h.com
17 SEYFARTH SHAW LLP
18 2029 Century Park East, Suite 3500
19 Los Angeles, California 90067-3021

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FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614

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

31 Date: March 5, 2021

Ashkan Shakouri
Ashkan Shakouri