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Superior Court of California
County of Los Angeles

MAY 18 2021

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

JACQUELINE GONZAGA, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

MOLINA HEALTHCARE, INC., a
Delaware corporation; MOLINA
HEALTHCARE OF CALIFORNIA, a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21STCV03598

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Violation of California Business &

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- Professions Code §§ 17200, *et seq.*
(Unlawful Business Practices); and
(10) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)
(11) Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*,

Jury Trial Demanded

1 Plaintiff Jacqueline Gonzaga, individually and on behalf of all other members of the
2 public similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

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

7 **THE PARTIES**

8 4. Plaintiff JACQUELINE GONZAGA is a resident of Compton, in Los Angeles
9 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Case
10 Manager from approximately September 2016 to December 2020. Plaintiff worked for
11 Defendants at their corporate office in Long Beach, California. During her employment,
12 Plaintiff typically worked eight (8) hours or more per day, and five (5) or more days per week.
13 Plaintiff's primary job duties included, without limitation, managing coordinated case care
14 plans by making calls to members, medical personnel, senior centers, social workers, and
15 community resource organizations; creating daily reports; and responding to monthly and
16 quarterly audits.

17 5. MOLINA HEALTHCARE, INC. was and is, upon information and belief, a
18 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
19 are engaged throughout this county, the State of California, or the various states of the United
20 States of America.

21 6. MOLINA HEALTHCARE OF CALIFORNIA was and is, upon information
22 and belief, a California corporation, and at all times hereinafter mentioned, an employer
23 whose employees are engaged throughout this county, the State of California, or the various
24 states of the United States of America.

25 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
26 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
27 amend the complaint and serve such fictitiously named Defendants once their names and
28 capacities become known.

1 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
2 were the partners, agents, owners, or managers of MOLINA HEALTHCARE, INC. and
3 MOLINA HEALTHCARE OF CALIFORNIA at all relevant times.

4 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
5 acts and omissions alleged herein was performed by, or is attributable to, MOLINA
6 HEALTHCARE, INC.; MOLINA HEALTHCARE OF CALIFORNIA; and/or DOES 1
7 through 10 (collectively, “Defendants” or “MOLINA”), each acting as the agent, employee,
8 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
9 and was acting within the course and scope of such agency, employment, joint venture, or
10 concerted activity with legal authority to act on the others’ behalf. The acts of any and all
11 Defendants were in accordance with, and represent, the official policy of Defendants.

12 10. At all relevant times, Defendants, and each of them, ratified each and every act
13 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
14 and abetted the acts and omissions of each and all the other Defendants in proximately causing
15 the damages herein alleged.

16 11. Plaintiff is informed and believes, and thereon alleges, that each of said
17 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
18 omissions, occurrences, and transactions alleged herein.

19 12. Under California law, Defendants are jointly and severally liable as employers
20 for the violations alleged herein because they have each exercised sufficient control over the
21 wages, hours, working conditions, and employment status of Plaintiff and class members.
22 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
23 controlled their work schedule and/or conditions of employment, determined their rate of pay,
24 and maintained their employment records. Defendants suffered or permitted Plaintiff and
25 class members to work and/or “engaged” Plaintiff and class members so as to create a
26 common-law employment relationship. As joint employers of Plaintiff and class members,
27 Defendants are jointly and severally liable for the civil penalties and all other relief available
28 to Plaintiff and class members under the law.

1 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
3 members because Defendants have:

- 4 (a) jointly exercised meaningful control over the work performed by
5 Plaintiff and class members;
6 (b) jointly exercised meaningful control over Plaintiff's and class members'
7 wages, hours, and working conditions, including the quantity, quality
8 standards, speed, scheduling, and operative details of the tasks
9 performed by Plaintiff and class members;
10 (c) jointly required that Plaintiff and class members perform work which is
11 an integral part of Defendants' businesses; and
12 (d) jointly exercised control over Plaintiff and class members as a matter of
13 economic reality in that Plaintiff and class members were dependent on
14 Defendants, who shared the power to set the wages of Plaintiff and class
15 members and determined their working conditions, and who jointly
16 reaped the benefits from the underpayment of their wages and
17 noncompliance with other statutory provisions governing their
18 employment.

19 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
20 there has existed a unity of interest and ownership between Defendants such that any
21 individuality and separateness between the entities has ceased.

22 15. MOLINA HEALTHCARE, INC; MOLINA HEALTHCARE OF
23 CALIFORNIA; and/or DOES 1 through 10 are therefore alter egos of each other.

24 16. Adherence to the fiction of the separate existence of Defendants would permit
25 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
26 from liability for the wrongful acts committed by them under the name MOLINA.

27 17. Plaintiff further alleges, upon information and belief, that Defendants MOLINA
28 HEALTHCARE, INC. and MOLINA HEALTHCARE OF CALIFORNIA are alter egos of

each other for the following reasons:

- (a) According to MOLINA HEALTHCARE, INC.'s most recent SEC 10K filing, MOLINA HEALTHCARE OF CALIFORNIA is a wholly owned subsidiary of MOLINA HEALTHCARE, INC.;¹
- (b) On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>), MOLINA HEALTHCARE, INC. and MOLINA HEALTHCARE OF CALIFORNIA share the same entity address and mailing address, "200 OCEANGATE, SUITE 100, LONG BEACH, CALIFORNIA 90802";
- (c) According to Defendants' most recent "Statement of Information" forms filed with the California Secretary of State, MOLINA HEALTHCARE, INC. and MOLINA HEALTHCARE OF CALIFORNIA share the same officers and/or directors, including, but not limited to, Jeff Barlow, who serves as Secretary for both entities;
- (d) MOLINA HEALTHCARE, INC. and MOLINA HEALTHCARE OF CALIFORNIA share the same agent for service of process, CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199); and
- (e) On information and belief, MOLINA HEALTHCARE, INC. and MOLINA HEALTHCARE OF CALIFORNIA utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants contract with state governments to offer a leading health plan with a wide range of healthcare services for families and individuals. Upon information and belief,

¹ 10-K Annual Report 02/14/20, MOLINA HEALTHCARE, INC., <https://investors.molinahealthcare.com/financial-information/sec-filings> (last accessed January 28, 2021).

1 Defendants maintain a single, centralized Human Resources (“HR”) department at their
2 company headquarters in Long Beach, California, which is responsible for the recruiting and
3 hiring of new employees, and communicating and implementing Defendants’ company-wide
4 policies, including timekeeping policies and meal and rest period policies, to employees
5 throughout California.

6 19. In particular, Plaintiff and class members, on information and belief, received
7 the same standardized documents and/or written policies. Upon information and belief, the
8 usage of standardized documents and/or written policies, including new-hire documents,
9 indicate that Defendants dictated policies at the corporate level and implemented them
10 company-wide, regardless of their employees’ assigned locations or positions. Upon
11 information and belief, Defendants set forth uniform policies and procedures in several
12 documents provided at an employee’s time of hire.

13 20. Upon information and belief, Defendants maintain a centralized Payroll
14 department at their company headquarters in Long Beach, California, which processes payroll
15 for all non-exempt, hourly paid employees working for Defendants at their various locations
16 and jobsites in California, including Plaintiff and class members. Based upon information and
17 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
18 employees in California, irrespective of their work locations. Upon information and belief,
19 Defendants process payroll for departing employees in the same manner throughout the State
20 of California, regardless of the manner in which each employee’s employment ends.

21 21. Defendants continue to employ non-exempt or hourly paid employees in
22 California.

23 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
25 and advisors knowledgeable about California labor and wage law, employment and personnel
26 practices, and about the requirements of California law.

27 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
28 members were not paid for all hours worked because all hours worked were not recorded.

1 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive certain wages for
3 overtime compensation and that they were not receiving certain wages for overtime
4 compensation.

5 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive at least minimum
7 wages for compensation and that they were not receiving at least minimum wages for work
8 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
9 and class members were not paid at least minimum wages for work done off-the-clock.

10 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to meal periods in
12 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
13 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
14 periods and that Plaintiff and class members were not provided with all meal periods or
15 payment of one (1) additional hour of pay at their regular rates of pay when they did not
16 receive a timely, uninterrupted, thirty (30) minute meal period.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to rest periods in
19 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
20 additional hour of pay at their regular rates of pay when they were not authorized and
21 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
22 and class members were not authorized and permitted to take compliant rest periods, nor did
23 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
24 pay at their regular rates of pay when they were not authorized and permitted to take a
25 compliant rest period.

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive complete and
28 accurate wage statements in accordance with California law. In violation of the California

1 Labor Code, Plaintiff and class members were not provided complete and accurate wage
2 statements.

3 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain accurate and complete payroll records in
5 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
6 and intentionally failed to do so.

7 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to timely payment of all
9 wages earned upon termination of employment. In violation of the California Labor Code,
10 Plaintiff and class members did not receive payment of all wages due, including, but not
11 limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
12 within permissible time periods.

13 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of wages
15 during their employment. In violation of the California Labor Code, Plaintiff and class
16 members did not receive payment of all wages, including, but not limited to, overtime wages,
17 minimum wages, and/or meal and rest period premium wages, within permissible time
18 periods.

19 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive full
21 reimbursement for all business-related expenses and costs they incurred during the course and
22 scope of their employment and that they did not receive full reimbursement of applicable
23 business-related expenses and costs incurred.

24 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
27 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
28 falsely represented to Plaintiff and class members that they were properly denied wages, all in

1 order to increase Defendants' profits.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

12 36. Plaintiff and other current and former employees of Defendants are "aggrieved
13 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
14 or former employees and one or more of the alleged violations were committed against them.

15 37. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
16 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
17 following requirements have been met:

- 18 a) The aggrieved employee or representative shall give written notice by
19 online filing with the LWDA and by certified mail to the employer of
20 the specific provisions of the California Labor Code alleged to have
21 been violated, including the facts and theories to support the alleged
22 violation.
- 23 b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(a) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).
- 26 c) The LWDA shall notify the employer and the aggrieved employee or
27 representative by certified mail that it does not intend to investigate the
28 alleged violation ("LWDA's Notice") within sixty (60) calendar days of

1 the postmark date of the aggrieved employee's notice. Upon receipt of
2 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
3 (65) calendar days of the postmark date of the aggrieved employee's
4 notice, the aggrieved employee may commence a civil action pursuant
5 to California Labor Code section 2699 to recover civil penalties.

6 38. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
7 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
8 provision other than those listed in Section 2699.5 after the following requirements have been
9 met:

- 10 d) The aggrieved employee or representative shall give written notice by
11 online filing with the LWDA and by certified mail to the employer of
12 the specific provisions of the California Labor Code alleged to have
13 been violated (other than those listed in Section 2699.5), including the
14 facts and theories to support the alleged violation.
- 15 e) An aggrieved employee's notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 f) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice sent by the aggrieved
20 employee or representative. The employer shall give written notice
21 within that period of time by certified mail to the aggrieved employee or
22 representative and by online filing with the LWDA if the alleged
23 violation is cured, including a description of actions taken, and no civil
24 action pursuant to Section 2699 may commence. If the alleged violation
25 is not cured within the 33-day period, the aggrieved employee may
26 commence a civil action pursuant to Section 2699.

27 39. On February 12, 2021, Plaintiff provided written notice by online filing to the
28 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor

1 Code alleged to have been violated, including facts and theories to support the alleged
2 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
3 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
4 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
5 Plaintiff PAGA Case Number LWDA-CM 821607-21. A true and correct copy of Plaintiff's
6 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1".

7 40. As of the filing date of this complaint, over 65 days have passed since Plaintiff
8 sent the notice described above to the LWDA, and the LWDA has not responded that it
9 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

10 41. Thus, Plaintiff has satisfied the administrative prerequisites under California
11 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
12 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
13 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198 and 2802.

14 42. Labor Code section 558(a) provides "[a]ny employer or other person acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare
17 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
18 dollars (\$50) for each underpaid employee for each pay period for which the employee was
19 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
21 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
22 to any other civil or criminal penalty provided by law."

23 43. Defendants, at all times relevant to this complaint, were employers or persons
24 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
25 rights by violating various sections of the California Labor Code as set forth above.

26 44. As set forth below, Defendants have violated numerous provisions of both the
27 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
28 Order.

45. Pursuant to PAGA, and in particular, California Labor Code sections 256, 226.3, 558, 1174.5, 1197.1, 2699(a) and 2699(f)-(g), 2699.3(a) and 2699.3(c), and 2699.5 , Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198 and 2802.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

47. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

48. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

49. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial (“Subclass”).

50. Members of the Class and Subclass are referred to herein as “class members.”

51. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

52. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

(a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime

- 1 compensation to Plaintiff and class members;
- 2 (b) Whether Defendants failed to pay Plaintiff and class members at least
- 3 minimum wages for all hours worked;
- 4 (c) Whether Defendants failed to provide Plaintiff and class members with
- 5 meal periods;
- 6 (d) Whether Defendants failed to authorize and permit Plaintiff and class
- 7 members to take rest periods;
- 8 (e) Whether Defendants provided Plaintiff and class members with
- 9 complete and accurate wage statements as required by California Labor
- 10 Code section 226(a);
- 11 (f) Whether Defendants maintained accurate payroll records as required by
- 12 California Labor Code section 1174(d);
- 13 (g) Whether Defendants failed to pay earned overtime wages, minimum
- 14 wages, and/or meal and rest period premium wages, due to Plaintiff and
- 15 class members upon their discharge;
- 16 (h) Whether Defendants failed timely to pay overtime wages, minimum
- 17 wages, and/or meal and rest period premium wages, due to Plaintiff and
- 18 class members during their employment;
- 19 (i) Whether Defendants failed to reimburse Plaintiff and class members for
- 20 necessary and required business-related expenditures and/or losses
- 21 incurred by them in the scope of their employment;
- 22 (j) Whether Defendants engaged in unlawful and unfair business practices
- 23 in violation of California Business & Professions Code sections 17200,
- 24 *et seq.*; and
- 25 (k) The appropriate amount of damages, restitution, or monetary penalties
- 26 resulting from Defendants' violations of California law.

27 53. There is a well-defined community of interest in the litigation and the class

28 members are readily ascertainable:

- 1 (a) Numerosity: The class members are so numerous that joinder of all
2 members would be unfeasible and impractical. The membership of the
3 entire class is unknown to Plaintiff at this time; however, the class is
4 estimated to be greater than one hundred (100) individuals and the
5 identity of such membership is readily ascertainable by inspection of
6 Defendants' employment records.
- 7 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
8 protect the interests of each class member with whom she has a well-
9 defined community of interest, and Plaintiff's claims (or defenses, if
10 any) are typical of all class members as demonstrated herein.
- 11 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
12 protect the interests of each class member with whom she has a well-
13 defined community of interest and typicality of claims, as demonstrated
14 herein. Plaintiff acknowledges that she has an obligation to make
15 known to the Court any relationship, conflicts or differences with any
16 class member. Plaintiff's attorneys, the proposed class counsel, are
17 versed in the rules governing class action discovery, certification, and
18 settlement. Plaintiff has incurred, and throughout the duration of this
19 action, will continue to incur costs and attorneys' fees that have been,
20 are, and will be necessarily expended for the prosecution of this action
21 for the substantial benefit of each class member.
- 22 (d) Superiority: The nature of this action makes the use of class action
23 adjudication superior to other methods. A class action will achieve
24 economies of time, effort, and expense as compared with separate
25 lawsuits, and will avoid inconsistent outcomes because the same issues
26 can be adjudicated in the same manner and at the same time for the
27 entire class.
- 28 (e) Public Policy Considerations: Employers in the State of California

1 violate employment and labor laws every day. Current employees are
2 often afraid to assert their rights out of fear of direct or indirect
3 retaliation. Former employees are fearful of bringing actions because
4 they believe their former employers might damage their future
5 endeavors through negative references and/or other means. Class
6 actions provide the class members who are not named in the complaint
7 with a type of anonymity that allows for the vindication of their rights
8 while simultaneously protecting their privacy.

9 **FIRST CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**
11 **(Against all Defendants)**

12 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

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

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

23 57. Specifically, the applicable IWC Wage Order provides that Defendants are and
24 were required to pay Plaintiff and class members working more than eight (8) hours in a day
25 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
26 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
27 workweek.

28 58. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
2 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
3 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
4 employee, including nondiscretionary bonuses and incentive pay.

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

11 60. During the relevant time period, Defendants willfully failed to pay all overtime
12 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
13 class members were not paid overtime premiums for all of the hours they worked in excess of
14 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
15 hours in a week, because all hours worked were not recorded.

16 61. During the relevant period, Defendants had a company-wide policy and/or
17 practice of discouraging accrual of overtime hours by employees. Because Defendants
18 discouraged overtime accrual by, among other things, requiring employees to obtain pre-
19 approval of overtime hours from Defendants' supervisors, Plaintiff and class members would
20 complete assigned tasks outside of their scheduled shifts without being compensated for their
21 work. For example, Plaintiff arrived 30 minutes before each shift to start her computer,
22 review her assignments, check voice messages, review case files, and consult with
23 supervisors, but she did not clock in until her designated shift start-time. Thus, Defendants
24 failed to track this time spent working before and/or after scheduled shifts, and Plaintiff and
25 class members received no compensation for this time.

26 62. In addition, Defendants had, a loss prevention policy requiring Plaintiff and
27 class members to undergo security checks at the end of their shifts before leaving the
28 premises. At the end of their shifts, Plaintiff and class members were required to wait off-the-

1 clock to undergo a security check before they could leave Defendants' locations. For
2 example, during the first three (3) months of her employment, approximately four (4) times
3 per week, Plaintiff was required to spend 5-10 minutes after the end of her shift waiting for
4 and undergoing security searches to ensure that she had her assigned company laptop with her
5 before leaving the premises. As a result, Plaintiff and class members were subject to
6 Defendants' control, but were not compensated for this time.

7 63. Moreover, during the relevant time period, Defendants had, and continue to
8 have, a company-wide policy and/or practice of understaffing their worksites while assigning
9 heavy workloads and deadlines, resulting in a failure to provide Plaintiff and class members
10 with adequate meal period coverage. On information and belief, Defendants imposed monthly
11 and quarterly deadlines to meet annual and bi-annual reporting requirements. Defendants also
12 failed to schedule meal periods or adhere to a schedule of meal periods, which further
13 exacerbated the lack of meal period coverage. As a result, upon information and belief,
14 Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods
15 during shifts when they were entitled to receive a meal period, and were not compensated for
16 this time.

17 64. Defendants knew or should have known that as a result of these company-wide
18 practices and/or policies, Plaintiff and class members were performing their assigned duties
19 off-the-clock before and after their shifts and during meal periods, and were suffered or
20 permitted to perform work for which they were not paid. Because Plaintiff and class members
21 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
22 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
23 members were not paid overtime wages for all of the overtime hours they actually worked.

24 65. Defendants' failure to pay Plaintiff and class members the balance of overtime
25 compensation as required by California law, violates the provisions of California Labor Code
26 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
27 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
28 and attorneys' fees.

SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

66. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

68. As stated, during the relevant time period, as a result of Defendants’ policy of limiting the amount of overtime employees could accrue by discouraging and impeding Plaintiff and class members from recording hours worked that were outside of their scheduled shifts, Plaintiff and class members were required to work off-the-clock before and/or after their scheduled shift start and end times to complete assigned job duties. Further, as stated above, Defendants required Plaintiff and class members to undergo security checks after clocking out, but failed to compensate them for this time. And, as stated above, on information and belief, due to Defendants’ policies and/or practices of understaffing while assigning heavy workloads and/or deadlines, combined with their failure to schedule and/or adhere to a schedule of meal periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled.

69. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff and class members worked through that qualified for overtime premium payment. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in

violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

70. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period Violations (Against all Defendants)

71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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

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

74. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

1 75. During the relevant time period, as stated, Defendants had, and continue to
2 have, a company-wide policy and/or practice of understaffing while assigning heavy
3 workloads and/or deadlines for completing assessments and audits. Additionally, as stated,
4 Defendants had a company-wide practice of failing to schedule meal periods and/or adhere to
5 a schedule of meal periods, which further caused Plaintiff and class members to not be
6 relieved of their duties for compliant meal periods.

7 76. Defendants' practices and policies prevented Plaintiff and class members from
8 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
9 members would be forced to work in excess of five (5) hours before taking a meal period and,
10 at times, had their meal periods interrupted and/or had to forgo their meal periods altogether.
11 For example, twice per month, Plaintiff took her meal periods after the end of her fifth hour of
12 work because she had to finish conducting a phone interview with a member. Plaintiff and
13 class members did not sign valid meal period waivers on days that they were entitled to meal
14 periods and were not relieved of all duties.

15 77. At all times herein mentioned, Defendants knew or should have known that, as
16 a result of these policies, Plaintiff and class members were not actually relieved of all duties to
17 take timely, uninterrupted meal periods. Defendants further knew or should have known that
18 Defendants did not pay Plaintiff and class members meal period premium wages when meal
19 periods were late, interrupted, shortened, or missed.

20 Furthermore, Defendants engaged in a company-wide practice and/or policy of not
21 paying all meal period premiums owed when compliant meal periods are not provided.
22 Because of this practice and/or policy, Plaintiff and class members have not received premium
23 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
24 Plaintiff and class members compliant meal periods in violation of California Labor Code
25 sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

26 78. Defendants' conduct violates the applicable IWC Wage Order, and California
27 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
28 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular

1 rate of compensation for each work day that the meal period was not provided.

2 **FOURTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
4 **(Against all Defendants)**

5 79. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 80. At all relevant times herein set forth, the applicable IWC Wage Order and
8 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
9 members' employment by Defendants.

10 81. At all relevant times, the applicable IWC Wage Order provides that “[e]very
11 employer shall authorize and permit all employees to take rest periods, which insofar as
12 practicable shall be in the middle of each work period” and that the “rest period time shall be
13 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
14 hours or major fraction thereof” unless the total daily work time is less than three and one-half
15 (3½) hours.

16 82. At all relevant times, California Labor Code section 226.7 provides that no
17 employer shall require an employee to work during any rest period mandated by an applicable
18 order of the California IWC. To comply with its obligation to authorize and permit rest
19 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
20 employer must “relinquish any control over how employees spend their break time, and
21 relieve their employees of all duties—including the obligation that an employee remain on
22 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
23 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
24 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
25 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
26 that a required rest period was not authorized and permitted.

27 83. During the relevant time period, Defendants regularly failed to authorize and
28 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour

1 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
2 practices, including understaffing and assigning heavy workloads and deadlines, prevented
3 Plaintiff and class members from being relieved of all duty to take rest periods. Additionally,
4 Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide
5 adequate rest period coverage, further led to Plaintiff and class members not being authorized
6 and permitted to take compliant rest periods.

7 84. Additionally, on information and belief, during the relevant time period,
8 Defendants maintained and implemented a company-wide on-premises rest period policy,
9 which mandated that Plaintiff and class members remain on the work premises during their
10 rest periods. Because Plaintiff and class members were restricted from leaving the premises
11 during rest periods, they were denied the ability to use their rest periods freely for their own
12 purposes. Thus, Defendants effectively maintained control over Plaintiff and class members
13 during rest periods.

14 85. As a result of Defendants' practices and policies, Plaintiff and class members
15 worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without
16 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
17 Plaintiff missed her rest periods at least three (3) times per week in order to complete all of
18 the work-related duties Defendants assigned to her.

19 86. Defendants have also engaged in a company-wide practice and/or policy of not
20 paying all rest period premiums owed when compliant rest periods are not authorized and
21 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
22 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
23 and the applicable IWC Wage Order. .

24 87. Defendants' conduct violates the applicable IWC Wage Order and California
25 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
26 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
27 compensation for each work day that a compliant rest period was not authorized and
28 permitted.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

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

7 89. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the name and
10 address of the legal entity that is the employer, the inclusive dates of the pay period, total
11 hours worked, and all applicable rates of pay.

12 90. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
16 employing entity's name and address; and all applicable hourly rates in effect during the pay
17 period, including overtime rates of pay, and the corresponding number of hours worked at
18 each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
19 226(a)(8), and 226(a)(9).

20 91. Because Defendants did not record the time Plaintiff and Subclass members
21 spent working off the clock, Defendants did not list the correct amount of gross wages and net
22 wages earned by Plaintiffs and Subclass members in compliance with section 226(a)(1) and
23 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
24 worked by Plaintiffs and Subclass members in violation of section 226(a)(2), and failed to list
25 the applicable hourly rates of pay in effect during the pay period and corresponding accurate
26 number of work hours worked at each hourly rate in violation of section 226(a)(9).

27 92. Additionally, and separate from these violations, Defendants issued uniform
28 wage statements to Plaintiff and Subclass members that failed to list the name and address of

1 the legal entity of the actual employer in violation of 226(a)(8). The purpose of section
2 226(a)(8) is to provide California employees with transparency as to the true identity of their
3 employer, to allow the employee to contact their employer during employment in the future
4 for various reasons, including, filing an administrative claim, judicial claim, or other action to
5 seek relief against their employer, to obtain unemployment benefits, etc.

6 93. During the relevant time period, Defendants systematically, and on a company-
7 wide basis, issued wage statements to Plaintiff and Subclass members that fail to list the
8 employing entity's name and address. For example, Defendants uniformly failed to list the
9 employing entity's name and address on Plaintiff's and Subclass members' final wage
10 statements, including Plaintiff's wage statement dated December 1, 2020.

11 94. The wage statement deficiencies also include, without limitation, failing to list
12 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
13 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
14 only the last four digits of his or her social security number or an employee identification
15 number other than a social security number; failing to list the inclusive dates of the period for
16 which employees were paid; and/or failing to state all hours worked as a result of not
17 recording or stating hours worked off-the-clock.

18 95. California Labor Code section 1198 provides that the maximum hours of work
19 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
20 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
21 employment of any employees for longer hours than those fixed by the order or under
22 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
23 Wage Order, employers are required to keep accurate time records showing when the
24 employee begins and ends each work period and meal period. During the relevant time
25 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
26 and meal period start and stop times for Plaintiff and Subclass members, in violation of
27 California Labor Code section 1198.

28 96. California Labor Code section 1174(d) provides that "[e]very person employing

labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

97. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid

Upon Termination

(Against all Defendants)

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

99. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

100. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of

1 his or her intention to quit, in which case the employee is entitled to his or her wages at the
2 time of quitting.

3 101. Defendants willfully failed to pay Plaintiff and class members who are no
4 longer employed by Defendants the earned and unpaid wages set forth above, including but
5 not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
6 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
7 employ.

8 102. Defendants' failure to pay Plaintiff and class members who are no longer
9 employed by Defendants their wages earned and unpaid at the time of discharge, or within
10 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
11 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
12 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
13 thirty (30) day maximum pursuant to California Labor Code section 203.

14 **SEVENTH CAUSE OF ACTION**

15 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 16 **Employment**

17 **(Against all Defendants)**

18 103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 104. This cause of action is dependent upon, and wholly derivative of, the overtime
21 wages, minimum wages, and/or meal and rest period premium wages, that were not timely
22 paid to Plaintiff and those class members.

23 105. At all times relevant herein set forth, Labor Code section 204 provides that all
24 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
25 days, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
27 the month during which the labor was performed.

28 106. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth (16th) and the last day,
2 inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
4 month.

5 107. At all times relevant herein, Labor Code section 204 provides that all wages
6 earned for labor in excess of the normal work period shall be paid no later than the payday for
7 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
8 204 provides that the requirements of this section are deemed satisfied by the payment of
9 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
10 seven (7) calendar days following the close of the payroll period.

11 108. During the relevant time period, Defendants willfully failed to pay Plaintiff and
12 class members all wages due including, but not limited to, overtime wages, minimum wages,
13 and/or meal and rest period premium wages, within the time periods specified by California
14 Labor Code section 204.

15 109. Defendants' failure to pay Plaintiff and class members all wages due violates
16 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
17 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

18 **EIGHTH CAUSE OF ACTION**

19 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 20 **(Against all Defendants)**

21 110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 111. At all times herein set forth, California Labor Code section 2802 provides that
24 an employer must reimburse employees for all necessary expenditures and losses incurred by
25 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
26 to prevent employers from passing off their cost of doing business and operating expenses on
27 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
28 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen tools or

1 equipment are required by the employer or are necessary to the performance of a job, such
2 tools and equipment shall be provided and maintained by the employer, except that an
3 employee whose wages are at least two (2) times the minimum wage provided herein may be
4 required to provide and maintain hand tools and equipment customarily required by the trade
5 or craft.”

6 112. During the relevant time period, Defendants, on a company-wide basis, forced
7 Plaintiff and class members to purchase basic office supplies and equipment that were
8 necessary for completion of their work-related duties when they started to work from home
9 due to the COVID-19 pandemic. Although Defendants required Plaintiff and class members
10 to purchase and use their own supplies and tools for work, Defendants did not fully reimburse
11 them for these expenses.

12 113. Defendants could have provided Plaintiff and class members with the actual
13 tools for use on the job, such as office supplies and equipment. Or, Defendants could have
14 fully reimbursed employees for the costs of their office supplies and equipment. Instead,
15 Defendants passed these operating costs off onto Plaintiff and class members.

16 114. Defendants’ company-wide policy and/or practice of passing on their operating
17 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
18 have intentionally and willfully failed to reimburse Plaintiff and other class members for
19 necessary business-related expenses and costs.

20 115. Plaintiff and class members are entitled to recover from Defendants their
21 business-related expenses incurred during the course and scope of their employment, plus
22 interest.

23 **NINTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

25 **Unlawful Business Practices**

26 **(Against all Defendants)**

27 116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

117. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

118. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

119. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

120. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants’ policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage

statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein; and

(g) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

121. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

122. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

123. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

124. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

1 125. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
2 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
3 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
4 seeks to enforce important rights affecting the public interest within the meaning of Code of
5 Civil Procedure section 1021.5.

6 126. Defendants’ activities, namely Defendants’ company-wide practice and/or
7 policy of not paying Plaintiff and class members meal and rest period premiums due to them
8 under Labor Code section 226.7, deprived Plaintiff and class members of the compensation
9 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
10 provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate
11 employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238
12 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
13 Plaintiff and class members as part of their employment with Defendants, and thus
14 Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair
15 business practice in violation of California Business & Professions Code sections 17200, *et*
16 *seq. (Id.)*

17 127. A violation of California Business & Professions Code sections 17200, *et seq.*
18 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
19 and practices have violated the spirit of California’s meal and rest period laws and constitute
20 acts against the public policy behind these laws.

21 128. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
23 benefits implemented by section 226.7 withheld and retained by Defendants during a period
24 that commences four years prior to the filing of this complaint; a permanent injunction
25 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
26 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
27 Procedure section 1021.5 and other applicable laws; and an award of costs.

28 //

1 **ELEVENTH CAUSE OF ACTION**

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

3 **(Against all Defendants)**

4 129. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 130. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
9 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
10 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
11 violations of those Labor Code sections not found in section 2699.5, including sections 516
12 and 1182.12.

13 131. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

15 (f) Violation of Labor Code sections 510, 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiff and other
17 aggrieved employees with all required overtime pay and failure to
18 properly calculate the overtime rates paid to Plaintiff and other
19 aggrieved employees, as alleged herein;

20 (g) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
21 and the applicable IWC Wage Order for Defendants’ failure to
22 compensate Plaintiff and other aggrieved employees with at least
23 minimum wages for all hours worked, as alleged herein;

24 (h) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
25 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
26 and other aggrieved employees with meal periods, as alleged herein;

27 (i) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
28 IWC Wage Order for Defendants’ failure to authorize and permit

1 Plaintiff and other aggrieved employees to take rest periods, as alleged
2 herein;

3 (j) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
4 Wage Order for failure to provide accurate and complete wage
5 statements to Plaintiff and other aggrieved employees, as alleged herein;

6 (k) Violation of Labor Code sections 1174(d), 1198, and the applicable
7 IWC Wage Order for failure to maintain payroll records, as alleged
8 herein;

9 (l) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
10 earned wages upon termination, as alleged herein;

11 (m) Violation of Labor Code section 204 for failure to pay all earned wages
12 during employment, as alleged herein;

13 (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
14 and other aggrieved employees for all business expenses necessarily
15 incurred, as alleged herein;

16 132. Defendants' company-wide timekeeping system further prevented Plaintiff
17 and/or other aggrieved employees from recording all hours worked when their meal periods
18 were shortened or interrupted because Defendants implemented a timekeeping system set to
19 lock out Plaintiff and/or class members once they clocked out for a meal period, and would
20 not permit them to clock back in from a meal period before the 30 minutes elapsed. As a
21 result of Defendants' timekeeping system, Plaintiff and/or other aggrieved employees were
22 prevented from accurately recording when they had to return early from a meal period so that
23 they could be compensated for that time worked.

24 133. In addition, during the relevant time period, Plaintiff and/or other aggrieved
25 employees worked shifts in excess of 10 hours without receiving an uninterrupted second 30-
26 minute meal period to which they were entitled. Furthermore, Defendants kept no records of
27 meal start and end times for second meal periods.

28 134. To the extent that Defendants did pay Plaintiff and/or other aggrieved

1 employees premium pay for missed, late, and interrupted meal periods, Defendants did not
2 pay Plaintiff and/or aggrieved employees the correct overtime rate of pay for the recorded
3 overtime hours that they worked. In addition to an hourly wage, Defendants paid Plaintiff
4 and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms
5 of remuneration. However, in violation of the California Labor Code, Defendants failed to
6 incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other
7 forms of remuneration, into the calculation of the regular rate of pay for purposes of
8 calculating the overtime wage rate. Therefore, during the times when Plaintiff and/or other
9 aggrieved employees worked overtime and received these other forms of pay, Defendants
10 failed to pay all overtime wages by paying a lower overtime rate than required.

11 135. Moreover, because Defendants did not calculate Plaintiff's and/or other
12 aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages,
13 Defendants did not list the correct amount of net wages in violation of California Labor Code
14 section 226(a)(5). Defendants failed to correctly list all applicable hourly rates in effect
15 during the pay period, namely, correct overtime rates of pay and correct rates of pay for
16 premium wages, in violation of California Labor Code section 226(a)(9).

17 136. In addition, during the relevant time period, Defendants had a company-wide
18 policy of requiring Plaintiff and/or other aggrieved employees to use their own personal
19 cellular phones and cellular data to carry out their job duties, but Defendants failed to
20 reimburse them for the costs of their work-related cellular phone expenses. Plaintiff and/or
21 other aggrieved employees were required to use their personal cellular phones to complete
22 their work-related tasks, such as responding to emails. Although Defendants required Plaintiff
23 and/or other aggrieved employees to utilize their personal cellular phones to carry out their
24 work-related responsibilities, Defendants failed to reimburse them for this cost.

25 137. Plaintiff and other aggrieved employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 256, 226.3, 558, 1174.5, 1197.1, 2699(a) and 2699(f)-
27 (g), 2699.3(a) and 2699.3(c), and 2699.5 against Defendants for violations of California Labor
28 Code sections herein alleged including 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516,

1 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802, and applicable attorneys' fees, costs and
2 interest thereon.

3 **REQUEST FOR JURY TRIAL**

4 Plaintiff requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
7 against Defendants, jointly and severally, as follows:

8 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
9 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
10 reserves the right to amend her prayer for relief to seek a different amount.

11 **Class Certification**

12 2. That this case be certified as a class action;

13 3. That Plaintiff be appointed as the representative of the Class and Subclass;

14 4. That counsel for Plaintiff be appointed as class counsel.

15 **As to the First Cause of Action**

16 5. That the Court declare, adjudge, and decree that Defendants violated California
17 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
18 pay all overtime wages due to Plaintiff and class members;

19 6. For general unpaid wages at overtime wage rates and such general and special
20 damages as may be appropriate;

21 7. For pre-judgment interest on any unpaid overtime compensation commencing
22 from the date such amounts were due, or as otherwise provided by law;

23 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
24 California Labor Code section 1194(a); and

25 9. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Second Cause of Action**

28 10. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
2 minimum wages to Plaintiff and class members;

3 11. For general unpaid wages and such general and special damages as may be
4 appropriate;

5 12. For pre-judgment interest on any unpaid compensation from the date such
6 amounts were due, or as otherwise provided by law;

7 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code section 1194(a);

9 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

10 15. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Third Cause of Action**

13 16. That the Court declare, adjudge, and decree that Defendants violated California
14 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
15 willfully failing to provide all meal periods to Plaintiff and class members;

16 17. That the Court make an award to the Plaintiff and class members of one (1)
17 hour of pay at each employee's regular rate of pay for each workday that a meal period was
18 not provided;

19 18. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 19. For premiums pursuant to California Labor Code section 226.7(c);

22 20. For pre-judgment interest on any unpaid meal period premiums from the date
23 such amounts were due, or as otherwise provided by law;

24 21. For attorneys' fees pursuant to California Code of Civil Procedure section
25 1021.5, or as otherwise provided by law; and

26 22. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums, owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, and/or meal and rest period premiums, during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section

1 1021.5, or as otherwise provided by law; and

2 47. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Eighth Cause of Action**

5 48. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
7 related expenses and costs incurred by Plaintiff and class members;

8 49. For unpaid business-related expenses and such general and special damages as
9 may be appropriate;

10 50. For pre-judgment interest on any unpaid business-related expenses from the
11 date such amounts were due, or as otherwise provided by law;

12 51. For all actual, consequential, and incidental losses and damages, according to
13 proof;

14 52. For attorneys' fees and costs pursuant to California Labor Code section
15 2802(c), or as otherwise provided by law; and

16 53. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Ninth Cause of Action**

19 54. That the Court declare, adjudge and decree that Defendants' conduct of failing
20 to provide Plaintiff and class members all overtime wages due to them, failing to provide
21 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
22 class members all meal periods, failing to authorize and permit Plaintiff and class members to
23 take all rest periods, failing to provide Plaintiff and class members accurate and complete
24 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
25 failing timely to pay Plaintiff and class members all earned wages during employment, and
26 failing to reimburse Plaintiff and class members for business-related expenses, constitutes an
27 unlawful business practice in violation of California Business and Professions Code sections
28 17200, *et seq.*;

1 55. For restitution of unpaid wages to Plaintiff and all class members and
2 prejudgment interest from the day such amounts were due and payable;

3 56. For the appointment of a receiver to receive, manage and distribute any and all
4 funds disgorged from Defendants and determined to have been wrongfully acquired by
5 Defendants as a result of violations of California Business & Professions Code sections 17200
6 *et seq.*;

7 57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
8 California Code of Civil Procedure section 1021.5; and

9 For such other and further relief as the Court may deem equitable and appropriate.

10 **As to the Tenth Cause of Action**

11 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
12 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
13 an unfair business practice in violation of California Business and Professions Code sections
14 17200, *et seq.*;

15 59. For restitution of the statutory benefits under section 226.7 unfairly withheld
16 from Plaintiff and class members and prejudgment interest from the day such amounts were
17 due and payable;

18 60. For the appointment of a receiver to receive, manage and distribute any and all
19 funds disgorged from Defendants and determined to have been wrongfully acquired by
20 Defendants as a result of violations of California Business & Professions Code sections 17200
21 *et seq.*;

22 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Code of Civil Procedure section 1021.5;

24 62. For pre-judgment and post-judgment interest as provided by law; and

25 63. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Eleventh Cause of Action**

28 64. That the Court declare, adjudge and decree that Defendants violated the

1 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
2 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
3 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
4 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
5 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
6 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
7 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
8 employment); and 2802 (by failing to reimburse business expenses).

9 65. For civil penalties pursuant to California Labor Code sections 256, 226.3, 558,
10 1174.5, 1197.1, 2699(a) and 2699(f)-(g), 2699.3(a) and 2699.3(c) and 2699.5 for violations of
11 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
12 1182.12, 1194, 1197, 1197.1, 1198 and 2802.

13 66. For attorneys' fees and costs pursuant to California Labor Code section
14 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
15 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
16 1194, 1197, 1197.1, 1198 and 2802.

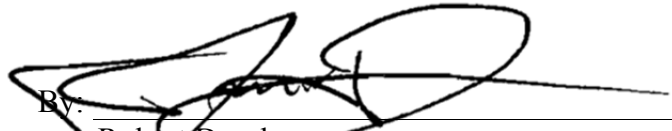
17 67. For pre-judgment and post-judgment interest as provided by law; and

18 68. For such other and further relief as the Court may deem equitable and
19 appropriate.
20

21 Dated: May 10, 2021

Respectfully submitted,

Capstone Law APC

23
24 BY: 
25 Robert Drexler
26 Molly DeSario
Jonathan Lee
Helga Hakimi

27 Attorneys for Plaintiff Jacqueline Gonzaga
28

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

February 12, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Jacqueline Gonzaga v. Molina Healthcare, Inc., et al.*

Dear PAGA Administrator:

This office represents Jacqueline Gonzaga in connection with her claims under the California Labor Code. Ms. Gonzaga was an employee of MOLINA HEALTHCARE, INC. and/or MOLINA HEALTHCARE OF CALIFORNIA. For the purpose of this letter, Ms. Gonzaga collectively refers to these entities as “MOLINA.”

The employers may be contacted directly at the addresses below:

MOLINA HEALTHCARE, INC.
200 OCEANGATE, SUITE 100
LONG BEACH CA 90802

MOLINA HEALTHCARE OF CALIFORNIA
200 OCEANGATE, SUITE 100
LONG BEACH CA 90802

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

MOLINA employed Ms. Gonzaga as a non-exempt, hourly paid Case Manager from approximately September 2016 to December 2020. Ms. Gonzaga worked for MOLINA at its corporate office in Long Beach, California. She typically worked eight (8) hours or more per day, and five (5) or more days per week. Her primary job duties included, without limitation, managing coordinated case care

plans by making calls to members, medical personnel, senior centers, social workers, and community resource organizations; creating daily reports; and responding to monthly and quarterly audits.

MOLINA has committed one or more of the following Labor Code violations against Ms. Gonzaga, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

MOLINA’s Company-Wide and Uniform Payroll and HR Practices

MOLINA HEALTHCARE, INC. and MOLINA HEALTHCARE OF CALIFORNIA are Delaware and California corporations, respectively, and headquartered in Long Beach, California. MOLINA contracts with state governments to offer a leading health plan with a wide range of healthcare services for families and individuals. Upon information and belief, MOLINA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Long Beach, California, for all non-exempt, hourly paid employees working for MOLINA in California, including Ms. Gonzaga and other aggrieved employees. At all relevant times, MOLINA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Gonzaga and other aggrieved employees, regardless of their location or position.

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

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

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

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

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

During the relevant period, MOLINA had a company-wide policy and/or practice of discouraging accrual of overtime hours by employees. Because MOLINA discouraged overtime accrual by, among other things, requiring employees to obtain pre-approval of overtime hours from MOLINA's supervisors, Ms. Gonzaga and other aggrieved employees would complete assigned tasks outside of their scheduled shifts without being compensated for their work. For example, Ms. Gonzaga arrived 30 minutes before each shift to start her computer, review her assignments, check voice messages, review case files, and consult with supervisors, but she did not clock in until her designated shift start-time. Thus, MOLINA failed to track this time spent working before and/or after scheduled shifts, and Ms. Gonzaga and other aggrieved employees received no compensation for this time.

In addition, MOLINA had a loss prevention policy requiring other aggrieved employees to undergo security checks at the end of their shifts before leaving the premises. At the end of their shifts, other aggrieved employees were required to wait off-the-clock to undergo a security check before they could leave MOLINA's locations. As a result, other aggrieved employees were subject to MOLINA's control, but were not compensated for this time.

Moreover, during the relevant time period, MOLINA had, and continues to have, a company-wide policy and/or practice of understaffing its worksites while assigning heavy workloads and deadlines, resulting in a failure to provide Ms. Gonzaga and other aggrieved employees with adequate meal period coverage. On information and belief, MOLINA imposed monthly and quarterly deadlines to meet annual and bi-annual reporting requirements. MOLINA also failed to schedule meal periods and/or adhere to a schedule of meal periods, which further exacerbated the lack of meal period coverage. As a result, upon information and belief, Ms. Gonzaga and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period, and were not compensated for this time. Moreover, MOLINA's company-wide timekeeping system further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because MOLINA implemented a timekeeping system set to lock out aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal before the 30 minutes elapsed.

MOLINA knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Gonzaga and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Gonzaga and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Gonzaga and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, MOLINA did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, MOLINA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, MOLINA failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, MOLINA failed to pay all overtime wages by paying a lower overtime rate than required.

MOLINA's failure to pay Ms. Gonzaga and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Gonzaga and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As stated, during the relevant time period, as a result of MOLINA's policy of limiting the amount of overtime employees could accrue by discouraging and impeding Ms. Gonzaga and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Gonzaga and other aggrieved employees were required to work off-the-clock before and/or after their scheduled shift start and end times to complete assigned job duties. Further, as stated above, MOLINA required other aggrieved employees to undergo security checks after clocking out, but failed to compensate them for this time. And, as stated above, on information and belief, due to MOLINA's policies and/or practices of understaffing while assigning heavy workloads and/or deadlines, combined with their failure to schedule and/or adhere to a schedule of meal periods, Ms. Gonzaga and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled. As also stated, MOLINA implemented a timekeeping system that automatically locked other aggrieved employees out for meal periods for a full 30 minutes, which further prevented them from recording hours worked when their meal periods were cut short and/or interrupted.

Thus, MOLINA did not pay minimum wages for all hours worked by Ms. Gonzaga and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, MOLINA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, MOLINA regularly failed to pay at least minimum wages to Ms. Gonzaga and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Gonzaga and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, MOLINA had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads and/or deadlines for completing assessments and audits. Additionally, as stated, MOLINA had a company-wide practice of failing to schedule meal periods and/or adhere to a schedule of meal periods, which further caused Ms. Gonzaga and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Ms. Gonzaga and/or other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods.

MOLINA's practices and policies prevented Ms. Gonzaga and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Gonzaga and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, twice per month, Ms. Gonzaga took her meal periods after the end of her fifth hour of work because she had to finish conducting a phone interview with a member. Moreover, as described above, MOLINA implemented an electronic timekeeping system that locked other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of MOLINA's timekeeping system, other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time worked.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Ms. Gonzaga and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, MOLINA knew or should have known that, as a result of these policies, Ms. Gonzaga and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. MOLINA further knew or should have known that MOLINA did

not pay Ms. Gonzaga and other aggrieved employees meal period premium wages when meal periods were late, interrupted, shortened, or missed.

MOLINA also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Gonzaga and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that MOLINA did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, MOLINA did not pay other aggrieved employees at the correct rate of pay for premium wages because MOLINA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, MOLINA regularly failed to authorize and permit Ms. Gonzaga and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MOLINA's company-wide practices, including understaffing and assigning heavy workloads and deadlines, prevented Ms. Gonzaga and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, MOLINA failed to schedule rest periods, which, coupled with MOLINA's failure to provide adequate rest period coverage, further led to Ms. Gonzaga and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, on information and belief, during the relevant time period, MOLINA maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Gonzaga and other aggrieved employees remain on the work premises during their rest periods. Because Ms.

Gonzaga and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, MOLINA effectively maintained control over Ms. Gonzaga and other aggrieved employees during rest periods.

As a result of MOLINA's practices and policies, Ms. Gonzaga and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Gonzaga missed her rest periods at least three (3) times per week in order to complete all of the work-related duties MOLINA assigned to her.

MOLINA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Gonzaga and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that MOLINA did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, MOLINA did not pay other aggrieved employees at the correct rate of pay for premium wages because MOLINA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MOLINA has not provided Ms. Gonzaga and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MOLINA has knowingly and intentionally provided Ms. Gonzaga and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MOLINA issued uniform wage statements to Ms. Gonzaga and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the employing entity's name and address; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, MOLINA violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because MOLINA did not record the time Ms. Gonzaga and other aggrieved employees spent working off-the-clock, MOLINA did not list the correct amount of gross wages and net wages earned by Ms. Gonzaga and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, MOLINA failed to accurately list the total number of the hours worked by Ms. Gonzaga and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

Third, and separate from these violations, MOLINA issued uniform wage statements to Ms. Gonzaga and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including, filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc.

During the relevant time period, MOLINA systematically, and on a company-wide basis, issued wage statements to Ms. Gonzaga and other aggrieved employees that fail to list the employing entity's name and address. For example, MOLINA uniformly failed to list the employing entity's name and address on Ms. Gonzaga's and other aggrieved employees' final wage statements, including Ms. Gonzaga's wage statement dated December 1, 2020. *See example wage statement below.*

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that

employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MOLINA willfully failed to maintain accurate payroll records for Ms. Gonzaga and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, MOLINA failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Gonzaga and other aggrieved employees, in violation of section 1198. Furthermore, in light of MOLINA’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, MOLINA kept no records of meal start and end times for second meal periods.

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

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

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

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

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

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

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

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

MOLINA willfully failed to pay Ms. Gonzaga and other aggrieved employees who are no longer employed by MOLINA the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages either at the time of discharge, or within seventy-two (72) hours of their leaving MOLINA's employ.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, MOLINA, on a company-wide basis, forced Ms. Gonzaga and other aggrieved employees to purchase basic office supplies and equipment that were necessary for completion of their work-related duties when they started to work from home due to the COVID-19 pandemic. Although MOLINA required Ms. Gonzaga and other aggrieved employees to purchase and use their own supplies and tools for work, MOLINA did not fully reimburse them for these expenses.

In addition, during the relevant time period, MOLINA had a company-wide policy of requiring other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but MOLINA failed to reimburse them for the costs of their work-related cellular phone expenses. Other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as responding to emails. Although MOLINA required other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, MOLINA failed to reimburse them for this cost.

MOLINA could have provided Ms. Gonzaga and other aggrieved employees with the actual tools for use on the job, such as office supplies, equipment, and company phones. Or, MOLINA could have fully reimbursed employees for the costs of their office supplies, equipment, or cellular phone expenses. Instead, MOLINA passed these operating costs off onto Ms. Gonzaga and other aggrieved employees.

Thus, MOLINA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Gonzaga and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

MOLINA failed to provide Ms. Gonzaga and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). MOLINA's failure to provide Ms. Gonzaga and other aggrieved employees with written notice of basic information regarding their employment with MOLINA is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

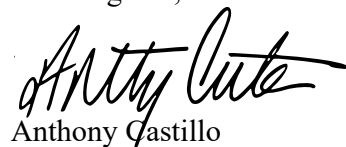
Accordingly, Ms. Gonzaga seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Gonzaga, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against MOLINA for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,



Anthony Castillo

Copy: MOLINA HEALTHCARE, INC. (via U.S. Certified Mail); MOLINA HEALTHCARE OF CALIFORNIA (via U.S. Certified Mail)



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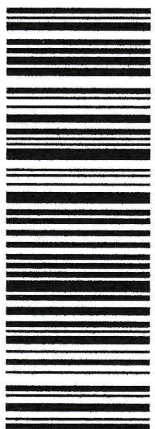
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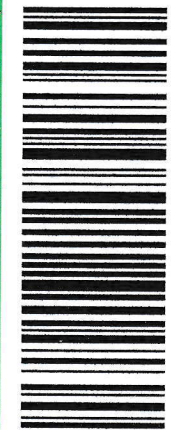
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Healthcare of
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| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles. I declare that I am over the age of eighteen
4 (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century
5 Park East, Suite 1000, Los Angeles, California 90067.

6 On May 10, 2021, I served the within document(s) described below as:

7 **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION**
8 **UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR**
9 **CODE §§2698, ET SEQ.**

on the interested parties as follows:

10 Tritia M. Murata
11 Monica A. Rodriguez
12 Lauren Renee Leibovitch
13 Morrison & Foerster LLP
14 707 Wilshire Boulevard, Suite 6000
15 Los Angeles, California 90017-3543
TMurata@mofo.com
MRodriguez@mofo.com
LLeibovitch@mofo.com

Bonnie Lau
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
BLau@mofo.com

- 16 (X) **BY E-MAIL.** Due to the National Emergency and public health orders in California
17 related to the coronavirus and COVID-19 pandemic, Capstone Law APC attorneys and
18 staff are working remotely and therefore have limited capabilities to send physical mail in
19 the normal course of business. On this date, I personally transmitted the foregoing
20 document(s) using electronic mail to the e-mail address(es) of the person(s) listed above.
21 () **PERSONAL:** I caused such envelope to be delivered by hand to the individuals at the
22 address listed above via a messenger service (Prolegal).
23 () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered
24 via overnight courier service (FedEx) to the individuals at the address listed above.
25 () **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-
26 named person at the telephone numbers above.
27 () **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes
28 were mailed with postage thereon fully prepaid on the individual(s) listed below.

- 24 (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that
25 the above is true and correct.

26 **EXECUTED** this document on May 10, 2021 at Los Angeles, California.

27 
28 _____
Sandy S. Acevedo