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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

12 SENECCA VAUGHN, as an individual and on
13 behalf of all others similarly aggrieved,

14 Plaintiff,

15 v.

17 PUBLIC HEALTH FOUNDATION
18 ENTERPRISES, INC., a California domestic
19 nonprofit; BLAYNE CUTLER, an individual;
and DOES 1-50, inclusive,

20 Defendants.
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CASE NO. **21STCV18512**

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

JURY TRIAL DEMANDED

1 Plaintiff SENECCA VAUGHN ("Plaintiff"), an individual, on behalf herself and all other
2 similarly aggrieved employees ("the Aggrieved Employees"), hereby files this Complaint against
3 Defendant PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. and Defendant BLAYNE
4 CUTLER (collectively referred to hereinafter as "Defendants") and DOES 1-50, inclusive, and
5 alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is proper
8 in Los Angeles County, California, because Defendants' principal place of business is located in
9 Los Angeles County and some of the complained of conduct occurred in this judicial district.

10 **THE PARTIES**

11
12 2. Plaintiff is, and at relevant times was, an individual domiciled in the State of California
13 and a citizen of the State of California who was employed as a non-exempt employee by
14 Defendants, in the State of California, from approximately June 2019 to approximately June 2020.

15 3. Defendant PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. is a California
16 domestic nonprofit that, at all relevant times, was authorized to do business within the State of
17 California and is doing business in the State of California.

18 4. Based on information and belief, BLAYNE CUTLER is an individual residing in the State
19 of California and is, and at all relevant times has been, the Chief Executive Officer of PUBLIC
20 HEALTH FOUNDATION ENTERPRISES, INC. Based on information and belief, BLAYNE
21 CUTLER devised and implemented the policies at issue in this complaint and "caused" these
22 violations as that term is used in Labor Code §§ 558 and 1197.1. Pursuant to Labor Code §§558
23 and 1197.1, BLAYNE CUTLER is liable as a person who "caused" the violations to occur.

24 5. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
25 50, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendant by said
26 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the
27 unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect
28 the true names and capacities of the Doe Defendants when such identities become known.

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

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

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

20 **FACTUAL ALLEGATIONS**

21 9. During the one year and sixty-five day period preceding filing of this Complaint, Plaintiff
22 Worked for Defendants as a non-exempt employee in the State of California. Defendants, at all
23 relevant times, exercised control over Plaintiff and the other Aggrieved Employees (as defined
24 below) and suffered and/or permitted them to work.

25 10. Plaintiff was employed by Defendants as a non-exempt employee from approximately
26 June 2019 to approximately June 2020. She worked for Defendants as an outreach specialist in
27 the city of San Francisco; her duties had her mostly working out in the field offering various
28 outreach suggestions to the homeless population, such as but not limited to, information about

1 shelters, medical providers, and food banks. Plaintiff typically worked at least nine and a half
2 hours per day, occasionally working shifts in excess of ten hours. Plaintiff was paid an hourly
3 rate for time counted by employer as time worked.

4 11. Plaintiff was not provided proper meal periods during her employment. Plaintiff was often
5 forced to work through her meal periods or forced to take late, shortened, interrupted and/or on-
6 duty meal periods due to her workload/commentary from supervisors pressuring Plaintiff to take
7 improper meal periods or skip meal periods completely. For example, Plaintiff reports that for at
8 least 20-25% of her shifts she was forced to take a lunch past the 5th hour of work but was not
9 paid a meal period premium for these noncompliant breaks. Moreover, Plaintiff's meal periods
10 were often interrupted or cut short and always on duty and thus improper as Defendants required
11 Plaintiff to at all times remain tethered to her company cell phone and respond to any work
12 situations that arose, including during any meal periods. Nevertheless, Defendants had a policy
13 and practice of automatically deducting a half hour per shift/requiring Plaintiff to clock out for
14 purported meal periods, despite having actual and/or constructive knowledge that Plaintiff did not
15 receive compliant meal periods. Upon information and belief, Defendants also rounded the start
16 and stop times of employee meal periods resulting in Plaintiff receiving shorter and/or later meal
17 periods than she was entitled to. Defendants failed to pay Plaintiff an additional hour of pay at
18 Plaintiff's regular rate of pay for each day Plaintiff missed or received an improper meal period.

19 12. Plaintiff did not receive compliant, timely 10 (ten)-minute rest periods for every four
20 (4) hours worked or major fraction thereof. Plaintiff was often required to work through all or
21 part of her rest periods due to her workload/commentary from supervisors pressuring Plaintiff to
22 take improper rest periods or skip her rest periods completely. Plaintiff was directed to monitor
23 her company cell phone and respond to any work situations that arose during any rest periods and
24 thus remained under employer control, rendering any purported rest periods improper. Plaintiff
25 was not paid rest period premiums for these missed/improper rest periods.

26 13. During Plaintiff's employment, Plaintiff was forced to perform off-the-clock work, *to wit*:
27 Defendants automatically deducted a half hour per shift/required Plaintiff to clock out for
28 purported meal periods, despite having actual and/or constructive knowledge that Plaintiff did not

1 receive compliant meal periods. This resulted in the underpayment of minimum wages and
2 overtime pay. Upon further information and belief, Defendants rounded the start and stop times
3 of employee meal periods resulting in Plaintiff receiving shorter meal periods than she was
4 entitled to and uncompensated work time. Based on information and belief, Defendants had
5 actual or constructive knowledge that its time-rounding policy resulted in meal periods being cut
6 short and thus the underpayment of minimum and overtime wages owed to Plaintiff. Additionally,
7 Defendants implemented a time-shaving/time-rounding system whereby it required its employees,
8 including Plaintiff, to "round" the start and stop times of their hours worked and/or only input
9 their scheduled start and stop times, rather than actual hours worked. This time-shaving system,
10 implemented by and through Defendants, resulted in record-keeping violations as well as
11 violations of California's minimum and overtime wage laws.

12 14. Defendants further violated California overtime laws by failing to pay Plaintiff proper
13 Overtime premiums. Plaintiff typically worked at least nine and a half hours per day but was
14 not paid any overtime premium pay or was not paid proper overtime premium pay for time
15 worked beyond eight (8) hours in a day. Defendants scheduled Plaintiff to work using an
16 alternative workweek schedule of four (4) 10 hour shifts per week ("4/10") yet failed to properly
17 adopt an alternative workweek election pursuant to Labor Code section 511 and the IWC Wage
18 Order(s), resulting in significant underpayment of overtime wages.

19 15. Based on information and belief, Defendants either failed to provide sick leave pay at all
20 or improperly accrued the amount of sick leave pay owed Plaintiff for failure to base the owed
21 sick leave pay on the correct number of hours worked. On further information and belief,
22 Defendants failed to provide notice of the correct sick leave amount balance available to Plaintiff.

23 16. Additionally, Defendants failed to provide wage statements that complied with Labor
24 Code section 226. Among other things, Plaintiff's paystubs do not accurately reflect, gross wages
25 earned, total hours worked, net wages earned, all applicable hourly rates in effect during each pay
26 period and all hours worked at each applicable hourly. Notably, due to Defendants' meal period
27 auto-deduction and rounding practices described herein, Defendants' wage statements do not
28 display the actual hours Plaintiff worked, a requirement of Labor Code section 226. Accordingly,

1 Defendants have violated Labor Code section 226 as to Plaintiff.

2 17. Upon termination, Defendants failed to furnish Plaintiff with her final paycheck
3 containing all earned and owed wages. Plaintiff's final paycheck did not include all wages owed
4 to Plaintiff as it was devoid of, including but not limited to, all earned and unpaid minimum and
5 overtime wages.

6 18. Furthermore, based on information and belief, Defendants required Plaintiff to submit to an
7 unlawful criminal and/or financial background check as a condition of obtaining and/or holding
8 employment in violation of Labor Code sections 1024.5 and/or 432.7. Defendants also required
9 Plaintiff to agree in writing to unlawful background checks not in conformance with the
10 requirements of the Investigative Consumer Reporting Agencies Act, Civil Code §§ 1786, *et seq.*
11 (“ICRAA”), and/or the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* (“FCRA”). Based on
12 information and belief, Defendants also asked about arrests not resulting in convictions on its
13 employment application.

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

19 20. During the period beginning one-year period preceding the filing of the required PAGA
20 notice with the Labor Workforce and Development Agency, and continuing through the present, as
21 alleged herein, Defendants violated Labor Code sections 201-202, 204, 216, 221-223, 226,
22 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2810.5 and
23 all relevant sections of the applicable Wage Orders, as to Plaintiff and the other Aggrieved
24 Employees. These violations subject Defendants to civil penalties as set forth in the foregoing
25 statutes as well as other provisions of the Labor Code, including without limitation Labor
26 Code sections 203, 225.5, 256, 210, 1174.5, 1197.1 and 2699.

27 **THE “AGGRIEVED EMPLOYEES”**

28 21. Plaintiff brings this action on behalf of herself and all similarly aggrieved employees.

1 The Aggrieved Employees shall be defined as follows: “All non-exempt employees employed by
2 PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. in California at any time within the
3 one year and sixty-five days prior to the filing of the initial complaint.”

4
5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
7 **LABOR CODE SECTIONS 2698, ET SEQ.**

8 22. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

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

23 24. Plaintiff and the other Aggrieved Employees regularly worked periods of more than five (5)
24 hours in a workday without being provided a mandatory thirty-minute, duty-free meal period and
25 occasionally worked shifts of more than ten hours without being provided a mandatory thirty-
26 minute, duty-free second meal period. Plaintiff and the other Aggrieved Employees were often
27 forced to work through their meal periods or forced to take late, shortened, interrupted and/or on-
28 duty meal periods due to their workload/commentary from supervisors pressuring Plaintiff and

1 the other Aggrieved Employees to take improper meal periods or skip meal periods completely.
2 For example, based on information and belief, Plaintiff and the other Aggrieved Employees took
3 their meal periods past the 5th hour of work at least 20-25% of the time but were not paid meal
4 period premiums for these noncompliant breaks. Moreover, Plaintiff's meal periods were often
5 interrupted or cut short and always on duty and thus improper as Defendants required Plaintiff
6 and the other Aggrieved Employees to at all times remain tethered to their company cell phones
7 and respond to any work situations that arose, including during any meal periods. Nevertheless,
8 Defendants had a policy and practice of automatically deducting a half hour per shift/requiring
9 Plaintiff and the other Aggrieved Employees to clock out for purported meal periods, despite
10 having actual and/or constructive knowledge that Plaintiff and the other Aggrieved Employees
11 were not receiving compliant meal periods. Based on information and belief, Defendants also
12 rounded the start and stop times of employee meal periods resulting in Plaintiff and the other
13 Aggrieved Employees receiving shorter and/or later meal periods than they were entitled to.
14 Defendants failed to pay Plaintiff and the other Aggrieved Employees an additional hour of pay at
15 their regular rate of pay for each day they missed or received an improper meal period.

16 25. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
17 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four
18 hours worked or major fraction thereof. Such rest periods must be in the middle of the four-hour
19 period "insofar as practicable." The rest period requirement obligates employers to permit and
20 authorize employees to take off-duty rest periods, meaning employers must relieve employees of
21 all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security*
22 *Services, Inc.*, (2016) 5 Cal.5th 257. Accordingly, an employer cannot require employees to stay
23 on the work premises nor may an employer require employees to monitor their cell phones and/or
24 other work communication devices during their rest periods as "one cannot square the practice of
25 compelling employees to remain at the ready, tethered by time and policy to *particular locations*
26 *or communications devices*, with the requirement to relieve employees of all work duties and
27 employer control during 10-minute rest periods. [emphasis added]." *Id.* at 269. If the employer
28 fails to provide any required rest period, the employer must pay the employee one hour of pay at

1 the employee's regular rate of compensation for each workday the employer did not provide at
2 least one legally required rest period, pursuant to Labor Code section 226.7.

3 26. Defendants failed to provide Plaintiff and the other Aggrieved Employees all required
4 and/or fully compliant rest periods, or compensation in lieu thereof. Defendants employed
5 policies and procedures that ensured Plaintiff and the other Aggrieved Employees would not
6 receive all legally required rest periods. Plaintiff and the other Aggrieved Employees did not
7 receive compliant, timely 10 (ten)- minute rest periods for every four (4) hours worked or major
8 fraction thereof. Plaintiff and the other Aggrieved Employees were often required to work
9 through all or part of their rest periods due to their workloads/commentary from supervisors
10 pressuring Plaintiff and the other Aggrieved Employees to take improper rest periods or skip rest
11 periods completely. Plaintiff and the other Aggrieved Employees were directed to monitor their
12 company cell phones during any rest periods and thus remained under employer control,
13 rendering said rest periods improper. Moreover, based on information and belief, the Aggrieved
14 Employees who did not work out in the field were required to remain onsite at Defendants'
15 office(s) during any purported rest periods, which is improper. Plaintiff and the other Aggrieved
16 Employees were not paid rest period premiums for these missed/improper rest periods.

17 27. California law provides employees in California must be paid for all hours worked, up to
18 40 per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage.
19 California law also provides employees in California must be paid overtime, equal to 1.5 times
20 the employee's regular rate of pay, for all hours worked in excess of 40 per week or eight (8) per
21 day and at a rate of double the employee's regular rate of pay for time worked beyond twelve
22 hours in a day. Plaintiff and the other Aggrieved Employees regularly worked time for which they
23 were not compensated, *to wit*: Defendants automatically deducted a half hour per shift/required
24 Plaintiff and the other Aggrieved Employees to clock out for purported meal periods, despite
25 having actual and/or constructive knowledge that Plaintiff and the other Aggrieved Employees
26 did not receive compliant meal periods. This resulted in the underpayment of minimum and
27 overtime wages. In addition, based on information and belief, Defendants rounded the start and
28 stop times of employee meal periods resulting in Plaintiff and the other Aggrieved Employees

1 receiving shorter meal periods than they were entitled to and uncompensated work time. Based
2 on information and belief, Defendants had actual or constructive knowledge that its time-
3 rounding policy resulted in meal periods being cut short and thus the underpayment of minimum
4 and overtime wages owed to Plaintiff and the other Aggrieved Employees, in violation of
5 California's minimum and overtime wage laws. Additionally, Defendants implemented a time-
6 shaving/time-rounding system whereby it required Plaintiff and the other Aggrieved Employees
7 to "round" the start and stop times of their hours worked and/or only input their scheduled start
8 and stop times, rather than actual hours worked. This time-shaving system, implemented by and
9 through Defendants, resulted in record-keeping violations as well as violations of California's
10 minimum and overtime wage laws.

11 28. Defendants further violated California overtime laws by failing to pay Plaintiff and the
12 other Aggrieved Employees all owed overtime premium wages by virtue of its illegally adopted
13 alternative workweek schedule. Labor Code §511(a) states in pertinent part: "Upon the proposal
14 of an employer, the employees of an employer may adopt a regularly scheduled alternative
15 workweek that authorizes work by the affected employees for no longer than 10 hours per day
16 within a 40-hour workweek without the payment to the affected employees of an overtime rate of
17 compensation pursuant to this section. A proposal to adopt an alternative workweek schedule
18 shall be deemed adopted only if it receives approval in a secret ballot election by at least two-
19 thirds of affected employees in a readily identifiable work unit. The regularly scheduled
20 alternative workweek proposed by an employer for adoption by employees may be a single work
21 schedule that would become the standard schedule for workers in the work unit, or a menu of
22 work schedule options, from which each employee in the unit would be entitled to choose." Labor
23 Code §511(e) states: "The results of any election conducted pursuant to this section shall be
24 reported by an employer to the Division of Labor Standards Enforcement within 30 days after the
25 results are final." Labor Code §511(b) states in pertinent part: "An affected employee working
26 longer than eight hours but not more than 12 hours in a day pursuant to an alternative workweek
27 schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no
28 less than one and one-half times the regular rate of pay of the employee for any work in excess of

1 the regularly scheduled hours established by the alternative workweek agreement and for any
2 work in excess of 40 hours per week. An overtime rate of compensation of no less than double the
3 regular rate of pay of the employee shall be paid for any work in excess of 12 hours per day and
4 for any work in excess of eight hours on those days worked beyond the regularly scheduled
5 workdays established by the alternative workweek agreement.” Defendants scheduled Plaintiff
6 and the other Aggrieved Employees to work using an alternative workweek schedule of four (4)
7 10 hour shifts per week (“4/10”), yet failed to comply with the requirements set forth in Labor
8 Code §511 and the IWC Wage Order(s) for legal alternative workweek schedules with regard to
9 Plaintiff and the other Aggrieved Employees. As such, Defendants failed to pay Plaintiff and the
10 other Aggrieved Employees legal overtime compensation for all work accomplished in excess of
11 eight (8) hours per day and/or forty (40) hours per week.

12 29. California law provides that, at the time of each payment of wages, the employer must
13 provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total
14 hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee
15 is being paid, the employee’s name and last four digits of their social security number, the name
16 and address of the legal entity that it is the employer, and all applicable hourly rates in effect
17 during the pay period and all hours worked at each rate. Defendants knowingly and intentionally
18 failed to provide Plaintiff and the other Aggrieved Employees with proper, itemized wage
19 statements as the wage statements provided by Defendants do not accurately reflect, *inter alia*, all
20 gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect
21 during each pay period and all hours worked at each applicable hourly. Notably, due to
22 Defendants’ meal period auto-deduction and rounding practices described herein, Defendants’
23 wage statements do not display the actual hours Plaintiff and the other Aggrieved Employees
24 worked, a requirement of Labor Code section 226. Accordingly, Defendants have violated Labor
25 Code section 226 as to Plaintiff and the other Aggrieved Employees.

26 30. California law requires employers to keep “accurate and complete” payroll records
27 showing, among other things, the hours worked daily by all non-exempt employees. Section 7 of
28 all applicable IWC Wage Orders similarly requires employers to keep time records showing, *inter-*

1 *alia*, when the employees begin and end each work period and reflecting the times during which
2 all owed meal periods are provided each day. At all relevant times, Defendants have failed, and
3 continue to fail, to keep the required time records, as Defendants did not record the true start and
4 stop times of Plaintiff and the other Aggrieved Employees' workdays and failed to accurately
5 record employee meal periods. Defendants' failure to keep "accurate and complete" payroll records
6 for Plaintiff and the other Aggrieved Employees violates Labor Code sections 1174, 1198-99, and
7 Section 7 of all applicable IWC Wage Orders. These violations subject Defendants to civil
8 penalties under the Labor Code, including without limitation sections 1174.5 and 2699. Each
9 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
10 results in a separate civil penalty.

11 31. California Labor Code section 204 requires an employer to pay employees all wages due
12 and payable at least twice each calendar month. Defendants failed to comply with Labor Code
13 section 204 by failing to timely pay twice during each calendar month all wages due and payable
14 to Plaintiff and the other Aggrieved Employees. Defendants' violations of Labor Code section 204
15 subject Defendants to civil penalties, including but not limited to the penalties set forth in California
16 Labor Code sections 210 and 2699. Each violation results in a separate civil penalty, for each
17 Aggrieved Employee for each pay period during which the statutory provisions were violated.

18 32. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time
19 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with
20 respect to employees who resign. For all Aggrieved Employees no longer employed by Defendants,
21 Defendants still has not paid such aggrieved employees all wages earned and unpaid at the time of
22 discharge, in that Defendants have not paid for, *inter alia*, all owed minimum and overtime wages.
23 These violations subject Defendants to civil penalties under the Labor Code, including without
24 limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate civil penalty,
25 for each Aggrieved Employee for each pay period during which the statutory provisions were
26 violated.

27 33. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
28 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this

1 section by failing to pay Plaintiff and the other Aggrieved Employees for all hours worked at the
2 proper wage rate and by failing to pay Plaintiff and the other Aggrieved Employees an additional
3 hour of pay for each meal/rest period not provided/that was invalid. These violations subject
4 Defendants to civil penalties under Labor Code section 225.5. Each violation results in a separate
5 civil penalty, for each aggrieved employee, for each pay period during which the statute
6 provisions were violated.

7 34. California Labor Code section 223 makes it unlawful for an employer to secretly pay
8 wages lower than required by statute while purporting to pay legal wages. As described above,
9 Defendants willfully and systematically denied Plaintiff and the other Aggrieved Employees
10 minimum and overtime wage compensation for all hours worked which resulted in the payment
11 of less than statutorily required wages to them. Defendants acted with the intent to deprive them
12 of statutory wages, including, but not limited to, overtime wages and minimum wages, to which
13 they were entitled to under California law.

14 35. Defendants failed to provide Plaintiff and the other Aggrieved Employees paid sick days
15 in accordance with Labor Code sections 245 through 248.5, further failing to put them on notice
16 of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code
17 section 2810.5 notice. Defendants failed to maintain accurate records documenting the hours
18 worked and paid sick days accrued and used by employees in violation of Labor Code section
19 247.5, permitting the presumption that Plaintiff and the other Aggrieved Employees were entitled
20 to the maximum number of hours accruable under this article at the time of their respective
21 separations of employment. By failing to correctly account for the true hours Plaintiff and the
22 other Aggrieved Employees worked by virtue of Defendants’ meal period auto-deduction and
23 rounding/time-shaving practices described herein, Defendants unlawfully retained and continue to
24 retain paid sick leave that should have been paid and was not. Accordingly, Defendants have
25 violated Labor Code sections 233 and 234 as to Plaintiff and the other Aggrieved Employees.
26 These violations subject Defendants to civil penalties under the Labor Code, including without
27 limitation Labor Code sections 233 and 234 and 2699. Each violation of each Labor Code section
28 and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

1 36. The Labor Code places certain procedural and substantive limits on employers' ability
2 to conduct employee background checks and on how employers can use the information they
3 obtain through those background checks. Labor Code Section 1024.5 states that employers,
4 except for financial institutions, may order a credit check only if the individual works (or is
5 applying to work) in certain positions, and Labor Code Section 432.7 prohibits an employer from
6 asking applicants about past arrest(s) unless they resulted in conviction(s) and even then certain
7 limitations apply. Additionally, the ICRAA and the FCRA mandate several requirements prior to
8 and following an employee background check, including but not limited to, identifying an
9 appropriate reason for the background check, a separate consent form with required disclosures
10 and certain formatting requirements, additional forms such as a summary of rights, as well as
11 proper notice of adverse actions taken, among other statutory requirements.

12 37. Based on information and belief, Defendants required Plaintiff and other Aggrieved
13 Employees to submit to an unlawful criminal and/or financial background check as a condition
14 of obtaining and/or holding employment in violation of Labor Code sections 1024.5 and/or 432.7.
15 Defendants also required Plaintiff and the other Aggrieved Employees to agree in writing to
16 unlawful background checks not in conformance with the requirements ICRAA and/or FCRA.
17 Based on information and belief, Defendants also asked about arrests not resulting in convictions
18 on its employment application. These violations subject Defendants to civil penalties under the
19 Labor Code, including without limitation Labor Code sections 432.5, 432.7 and 2699. Each
20 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
21 results in a separate civil penalty.

22 38. Under the provisions of PAGA and Labor Code sections 201-202, 204, 216, 221-223, 226,
23 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2810.5 and
24 all relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by
25 California Courts and administrative bodies, as well as any other law that is enforceable through
26 PAGA, Defendants are liable for all statutorily-specified penalties recoverable under PAGA as
27 enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA
28 penalties under Labor Code Section 2699(f) for any violation of a Labor Code section without a

1 specified civil penalty.

2 39. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
3 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
4 Development Agency (“LWDA”) via electronic mail at PAGAfilings@dir.ca.gov and to
5 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
6 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
7 alleged violations.

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

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

18
19 **PRAYER**

20 WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and severally,
21 as follows:

- 22 1. For civil penalties according to proof;
23 2 For reasonable attorney’s fees and costs of suit; and

24 ///

25 ///

26 ///

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3. For such other and further relief as the Court deems just and proper.

Dated: May 3, 2021

CROSNER LEGAL, P.C.

Zuk

Michael R. Crosner
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DEMAND FOR JURY TRIAL

Plaintiff SENECCA VAUGHN demands a trial by jury on all claims so triable.

Dated: May 3, 2021

CROSNER LEGAL, P.C.



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