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SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**ANN KLEIN PACIA, on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

KILROY REALTY, L.P., a Limited
Partnership; KILROY REALTY
CORPORATION, a Corporation and DOES 1
through 50, inclusive,

Defendants.

Case No. 21SMCV00989**REPRESENTATIVE ACTION
COMPLAINT FOR:**1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 233, 246, 351, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

1 Plaintiff Ann Klein Pacia (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendants KILROY REALTY, L.P. and
8 KILROY REALTY CORPORATION (“DEFENDANTS”) seeking only to recover PAGA civil
9 penalties for herself, and on behalf of all current and former aggrieved employees that worked
10 for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANTS’ violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 THE PARTIES

24 4. Kilroy Realty, L.P. and/or Kilroy Realty Corporation (“DEFENDANTS”) are
25 businesses that at all relevant times mentioned herein conducted and continue to conduct
26 substantial business in the state of California.
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1 5. DEFENDANTS operate a real estate investment trust. Founded in 1947,
2 DEFENDANTS own, develop, acquire and manage real estate in California.

3 6. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
4 of DEFENDANTS at all relevant times. PLAINTIFF alleges there has existed a unity of
5 interest and ownership between DEFENDANTS such that any individuality and separateness
6 between the entities has ceased. Kilroy Realty, L.P. and/or Kilroy Realty Corporation and DOES
7 1-50 are therefore alter egos of each other. Adherence to the fiction of the separate existence
8 of DEFENDANTS would permit an abuse of the corporate privilege, and would promote
9 injustice by protecting DEFENDANTS from liability for the wrongful acts committed by them
10 under the name Kilroy Realty, L.P. and/or Kilroy Realty Corporation.

11 7. PLAINTIFF further alleges that DEFENDANTS are the alter egos of each other
12 for the following reasons:

13 (A) On the California Secretary of State's website
14 (https://businesssearch.sos.ca.gov/) DEFENDANTS have the same entity
15 address and/or mailing address;

16 (B) According to their most recent "Statement of Information: forms filed with
17 the California Secretary of State, DEFENDANTS share the same Chief
18 Executive Officer - John B. Kilroy, Jr;

19 (C) On information and belief DEFENDANTS utilize the same standardized
20 employment forms and issue the same employment policies; and,

21 (D) DEFENDANTS share the same agent for service of process, Paracorp
22 Incorporated.

23 8. PLAINTIFF was employed by DEFENDANTS in California and was classified
24 as a non-exempt employee entitled to overtime pay and meal and rest periods from March of
25 2020 to October of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
26 DEFENDANTS as a non-exempt employee paid on an hourly basis.

27 9. PLAINTIFF, and such persons that may be added from time to time who satisfy
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1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to herself
3 and all individuals who are or previously were employed by Kilroy Realty, L.P. and/or Kilroy
4 Realty Corporation in California and classified as non-exempt employees ("AGGRIEVED
5 EMPLOYEES") during the time period of February 3, 2020 until a date as determined by the
6 Court (the "PAGA PERIOD").

7 10. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
8 or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this representative
9 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANTS'
10 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233,
11 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
12 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).¹
13 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
14 employees within the meaning of Labor Code § 2699, *et seq.*

15 11. The true names and capacities, whether individual, corporate, subsidiary,
16 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
17 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
18 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
19 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
20 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
21 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
22 responsible in some manner for one or more of the events and happenings that proximately
23 caused the injuries and damages hereinafter alleged.

24 12. The agents, servants and/or employees of the Defendants and each of them acting
25 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 agent, servant and/or employee of the Defendants, and personally participated in the conduct
2 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
3 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
4 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
6 agents, servants and/or employees.

7 THE CONDUCT

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9 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
10 were required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time
11 worked, meaning the time during which an employee is subject to the control of an employer,
12 including all the time the employee is suffered or permitted to work. DEFENDANTS from time
13 to time required PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying
14 them for all the time they were under DEFENDANTS' control. PLAINTIFF was from time to
15 time interrupted by work assignments while clocked out of DEFENDANTS' timekeeping
16 system, during what should have been PLAINTIFF's off duty meal period. As a result, the
17 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
18 compensation by regularly working without their time being accurately recorded and without
19 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' policy and
20 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
21 evidenced by DEFENDANTS' business records.

22 14. State and federal law provides that employees must be paid overtime at one-and-
23 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
24 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
25 employee's performance.

26 15. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
27 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF
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1 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
2 DEFENDANTS, including but not limited to, stipend wages for being on-call for
3 DEFENDANTS. The non-discretionary incentive program provided all employees paid on an
4 hourly basis with incentive compensation when the employees met the various performance
5 goals set by DEFENDANTS. However, when calculating the regular rate of pay in order to pay
6 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANTS failed to
7 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
8 of calculating overtime pay. Management and supervisors described the incentive program to
9 potential and new employees as part of the compensation package. As a matter of law, the
10 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
11 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
12 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
13 DEFENDANTS.

14 16. In addition, when DEFENDANTS required PLAINTIFF and other AGGRIEVED
15 EMPLOYEES to report to the work site to perform on-call tasks and engage in additional work
16 this resulted in a second reporting for work in a single workday. In such a circumstance of a
17 second reporting for work in a single workday, DEFENDANTS failed to pay these employees
18 reporting time pay as required by Cal. Code Regs., tit. 8, § 11040. Subdivision 5(B) states: "If
19 an employee is required to report for work a second time in any one workday and is furnished
20 less than two (2) hours of work on the second reporting, said employee shall be paid for two (2)
21 hours at the employee's regular rate of pay, which shall not be less than the minimum wage."
22 Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

23 17. During the PAGA PERIOD, DEFENDANTS failed and continue to fail to
24 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
25 overtime worked. DEFENDANTS unlawfully and unilaterally failed to accurately calculate
26 minimum and overtime wages for time worked by PLAINTIFF and other AGGRIEVED
27 EMPLOYEES in order to avoid paying these employees the correct compensation. As a result,
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1 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working
2 without compensation at the correct rates. DEFENDANTS' policy and practice to not pay the
3 AGGRIEVED EMPLOYEES the correct minimum and overtime wages for all time worked in
4 accordance with applicable law is evidenced by DEFENDANTS' business records.

5 18. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
6 EMPLOYEES were also from time to time unable to take thirty (30) minute off duty meal
7 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
8 AGGRIEVED EMPLOYEES were required to perform work as ordered by DEFENDANTS for
9 more than five (5) hours during some shifts without receiving a meal break from time to time.
10 Further, DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with
11 a second off-duty meal period for some workdays in which these employees were required by
12 DEFENDANTS to work ten (10) hours of work from time to time. PLAINTIFF and other
13 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
14 and in accordance with DEFENDANTS' strict corporate policy and practice. Also,
15 DEFENDANTS, as a matter of established company policy and procedure, administered a
16 practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED
17 EMPLOYEES, always to the benefit of DEFENDANTS, so that during the course of their
18 employment, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid less than they would
19 have been paid had they been paid for actual recorded time rather than "rounded" time.
20 DEFENDANTS' policy and practice not to pay PLAINTIFF and other AGGRIEVED
21 EMPLOYEES for all time worked, is evidenced by DEFENDANTS' business records. As a
22 result, DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES the
23 proper minimum and overtime wages.

24 19. During the PAGA PERIOD, DEFENDANTS failed to accurately record and pay
25 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
26 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
27 DEFENDANTS are required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for
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1 all time worked, meaning the time during which an employee was subject to the control of an
2 employer, including all the time the employee was permitted or suffered to permit this work.
3 DEFENDANTS required these employees to work off the clock without paying them for all the
4 time they were under DEFENDANTS' control. Specifically, PLAINTIFF was not allowed to
5 clock in until 8:30 a.m., yet she was required to stay on time and on target with her many daily
6 duties, including her various and vital daily reports. As such, PLAINTIFF often was required
7 to start working off-the-clock and then continued, and furthered, this tradition by completing
8 such reports after she clocked out at the conclusion of many days. Additionally, PLAINTIFF
9 also had to fill to fill out a questionnaire as to her daily symptoms during the COVID-19
10 pandemic. This work also was done off-the-clock and before PLAINTIFF clocked in for the
11 day. As such, DEFENDANTS knew or should have known that PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES were under compensated for all time worked. As a result,
13 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time worked by working without
14 their time being accurately recorded and without compensation at the applicable minimum wage
15 and overtime wage rates. To the extent that the time worked off the clock did not qualify for
16 overtime premium payment, DEFENDANTS failed to pay minimum wages for the time worked
17 off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

18 20. DEFENDANTS underpaid sick pay wages to PLAINTIFF and other
19 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay.
20 Specifically, PLAINTIFF and other non-exempt employees regularly earn non-discretionary
21 remuneration, including but not limited to, incentives, shift differential pay, and bonuses.
22 Rather than pay sick pay at the regular rate of pay, DEFENDANTS underpaid sick pay to
23 PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

24 21. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES were also from time to time unable to take rest breaks. During the PAGA
26 PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were also required to work in
27 excess of four (4) hours without being provided ten (10) minute rest periods. Further, these
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1 employees were denied their first rest periods of at least ten (10) minutes for every shift worked
2 of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for
3 every shift worked of between six (6) and eight (8) hours, and a first, second and third rest
4 period of at least ten (10) minutes for every shift worked of ten (10) hours or more from time
5 to time. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one
6 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
7 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
8 DEFENDANTS and DEFENDANTS' managers. Additionally, the applicable California Wage
9 Order requires employers to provide employees with off-duty rest periods, which the California
10 Supreme Court defined as time during which an employee is relieved from all work related
11 duties and free from employer control. In so doing, the Court held that the requirement under
12 California law that employers authorize and permit all employees to take rest period means that
13 employers must relieve employees of all duties and relinquish control over how employees
14 spend their time which includes control over the locations where employees may take their rest
15 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
16 five minutes out, five minutes back. Here, DEFENDANTS' policy restricted PLAINTIFF and
17 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
18 DEFENDANTS' rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
19 not leave the work premises during their rest period.

20 22. DEFENDANTS intentionally and knowingly failed to reimburse and indemnify
21 the PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
22 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
23 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section
24 2802, employers are required to indemnify employees for all expenses incurred in the course
25 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
26 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
27 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
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1 directions of the employer, even though unlawful, unless the employee, at the time of obeying
2 the directions, believed them to be unlawful."

3 23. In the course of their employment PLAINTIFF and other AGGRIEVED
4 EMPLOYEES as a business expense, were required by DEFENDANTS to use their own
5 personal vehicles as a result of and in furtherance of their job duties as employees for
6 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the fuel cost
7 associated with the use of their vehicles for DEFENDANTS' benefit. Specifically, PLAINTIFF
8 and other AGGRIEVED EMPLOYEES were required by DEFENDANTS to use their personal
9 vehicles for work related issues. As a result, in the course of their employment with
10 DEFENDANTS, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
11 business expenses which included, but were not limited to, costs related to the use of their
12 personal vehicles all on behalf of and for the benefit of DEFENDANTS.

13 24. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
14 employees with an accurate itemized wage statement in writing showing, among other things,
15 gross wages earned and all applicable hourly rates in effect during the pay period and the
16 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANTS
17 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified
18 DEFENDANTS' correct company name. Specifically, DEFENDANTS violated Cal. Lab Code
19 226(a)(8) by failing to list the correct name of the legal entity that employed PLAINTIFF and
20 the other AGGRIEVED EMPLOYEES. Aside from the violations listed above, DEFENDANTS
21 failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
22 California Labor Code 226 *et seq.* As a result, from time to time DEFENDANTS provided
23 PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violated
24 Cal. Lab. Code § 226.

25 25. All of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
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1 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
2 AJDAR 12157 (Certified for Publication 12/19/18).

3 **JURISDICTION AND VENUE**

4 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10.

6 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
7 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
8 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
9 in this County and/or conducts substantial business in this County, and (ii) committed the
10 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
11 EMPLOYEES.

12 **FIRST CAUSE OF ACTION**

13 **For Violation of the Private Attorneys General Act**

14 **[Cal. Lab. Code §§ 2698, *et seq.*]**

15 **(By PLAINTIFF and Against All Defendants)**

16 28. PLAINTIFF incorporates by reference the allegations set forth in the prior
17 paragraphs as though fully set forth at this point.

18 29. PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
20 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
21 fundamentally a law enforcement action designed to protect the public and not to benefit private
22 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
23 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
24 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
25 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
26 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
27 subject to arbitration.
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1 30. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, brings this Representative Action on behalf of the State of California with respect to herself
4 and all individuals who are or previously were employed by Kilroy Realty, L.P. and/or Kilroy
5 Realty Corporation in California and classified as non-exempt employees (the "AGGRIEVED
6 EMPLOYEES") during the time period of February 3, 2020 until a date as determined by the
7 Court (the "PAGA PERIOD").

8 31. On February 3, 2021, PLAINTIFF gave written notice by electronic mail to the
9 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
10 employer of the specific provisions of this code alleged to have been violated as required by
11 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
12 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
13 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
14 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

15 32. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
18 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
19 to pay minimum wages, (e) failed to pay wages when due, and (f) failed to reimburse employees
20 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
21 Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233, 246, 351, 510, 512,
22 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
23 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and thereby gives
24 rise to civil penalties as a result of such conduct.² PLAINTIFF hereby seeks recovery of only
25 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the

27 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
2 the other AGGRIEVED EMPLOYEES.

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4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
6 severally, as follows:

7 1. On behalf of the State of California and with respect to all AGGRIEVED
8 EMPLOYEES:

9 A) Recovery of civil penalties as prescribed by the Labor Code Private
10 Attorneys General Act of 2004; and,

11 B) An award of attorneys' fees and cost of suit, as allowable under the
12 law, including, but not limited to, pursuant to Labor Code §2699.

13 Dated: June 1, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
14 LLP

15 By: /s/ Norman Blumenthal
16 Norman B. Blumenthal
17 Attorneys for Plaintiff
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