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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

12 LESLIE MCGARY, as an aggrieved
13 employee pursuant to the Private Attorneys
14 General Act ("PAGA"), on behalf of the
15 State of California and other non-party
16 Aggrieved Employees,

17 Plaintiff,

18 vs.

19 SHIELD-CALIFORNIA HEALTH CARE
20 CENTER, INC., a California corporation;
21 and DOES 1 through 10, inclusive,

22 Defendants.

Case No. CIV SB 2116802

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Leslie McGary, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in this case on March 26, 2021, until judgment (“non-party Aggrieved Employees”). Plaintiff’s
13 share of civil penalties sought in this action does not exceed \$75,000.
14

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants employ or employed persons within the County of San Bernardino, and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and the applicable Wage Order in at least one location within the County of San Bernardino, including Defendants' location in Ontario (3290 E. Guasti Road, Suite 130, Ontario, California 91761). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County, and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Leslie McGary is a resident of Lancaster, in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Utilization Management Examiner from approximately October 2012 to October 2020. Plaintiff worked for Defendants at their corporate headquarters located in Valencia, California. During her employment, Plaintiff typically worked eight (8) or more hours per day, five (5) days per week, from 8:45 a.m. to 5:15 p.m. At the time Plaintiff's employment with Defendants ended, she earned approximately \$17.38 per hour. Her job duties included, without limitation, processing billing to insurance companies, determining customers' insurance eligibility, and verifying the validity of customer prescriptions.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their

1 hire or during their employment. On further information and belief, Defendants' dispute
2 resolution policy and/or arbitration agreement was and is both procedurally and substantively
3 unconscionable. Specifically, Defendants presented new hires with an "Alternative Dispute
4 Resolution Policy" ("Arbitration Agreement") during the onboarding process, which had to be
5 reviewed and acknowledged immediately. In fact, upon information and belief, the Arbitration
6 Agreement was one of several documents presented to new employees for signature during the
7 orientation process, including Security Card Guidelines, Statement of Policy Concerning
8 Confidential Information, and Acknowledgment of Receipt [of the employee handbook], among
9 other documents. Also, employees did not have a meaningful opportunity to negotiate the terms
10 of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to
11 sign on a take-it or leave-it basis at the time they were hired, along with other on-boarding
12 documents.

13 8. SHIELD-CALIFORNIA HEALTH CARE CENTER, INC. was and is, upon
14 information and belief, a California corporation, and at all times hereinafter mentioned, an
15 employer whose employees are engaged throughout this county and the State of California.

16 9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
17 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
18 complaint and serve such fictitiously named Defendants once their names and capacities
19 become known.

20 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
21 were the partners, agents, owners, or managers of SHIELD-CALIFORNIA HEALTH CARE
22 CENTER, INC. at all relevant times.

23 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
24 acts and omissions alleged herein was performed by, or is attributable to, SHIELD-
25 CALIFORNIA HEALTH CARE CENTER, INC. and/or DOES 1 through 10 (collectively,
26 "Defendants" or "SHIELD"), each acting as the agent, employee, alter ego, and/or joint venturer
27 of, or working in concert with, each of the other co-Defendants and was acting within the course
28 and scope of such agency, employment, joint venture, or concerted activity with legal authority

1 to act on the others' behalf. The acts of any and all Defendants were in accordance with, and
2 represent, the official policy of Defendants.

3 12. At all relevant times, Defendants, and each of them, ratified each and every act
4 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
5 and abetted the acts and omissions of each and all the other Defendants in proximately causing
6 the damages herein alleged.

7 13. Plaintiff is informed and believes, and thereon alleges, that each of said
8 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
9 omissions, occurrences, and transactions alleged herein.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

11 14. Defendants are a provider of medical products and devices for patients and
12 medical professionals, specializing in incontinence, urological, and ostomy supplies. Upon
13 information and belief, Defendants maintain a single, centralized Human Resources ("HR")
14 department at their corporate headquarters in Valencia, California, which is responsible for the
15 recruiting and hiring of new employees, and communicating and implementing Defendants'
16 company-wide policies, including timekeeping policies and meal and rest period policies, to
17 employees throughout California.

18 15. In particular, Plaintiff and other non-party Aggrieved Employees, on information
19 and belief, received the same standardized documents and/or written policies. Upon
20 information and belief, the usage of standardized documents and/or written policies, including
21 new-hire documents, indicate that Defendants dictated policies at the corporate level and
22 implemented them company-wide, regardless of their employees' assigned locations or
23 positions. Upon information and belief, Defendants set forth uniform policies and procedures
24 in several documents provided at an employee's time of hire.

25 16. Upon information and belief, Defendants maintain a centralized Payroll
26 department at their corporate headquarters in Valencia, California, which processes payroll for
27 all non-exempt, hourly paid employees working for Defendants at their various locations and
28 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based

1 upon information and belief, Defendants issue the same formatted wage statements to all non-
2 exempt, hourly paid employees in California, irrespective of their work locations. Upon
3 information and belief, Defendants process payroll for departing employees in the same manner
4 throughout the State of California, regardless of the manner in which each employee's
5 employment ends.

6 17. Defendants continue to employ non-exempt or hourly paid employees in
7 California.

8 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
10 advisors knowledgeable about California labor and wage law, employment and personnel
11 practices, and about the requirements of California law.

12 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
13 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
14 were not recorded.

15 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 receive certain wages for overtime compensation and that they were not receiving certain wages
18 for overtime compensation.

19 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that other non-party Aggrieved Employees were entitled to be paid at a
21 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
22 all income derived from commissions, incentive pay, nondiscretionary bonuses, and/or other
23 forms of compensation.

24 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive at least minimum wages for compensation and that they were not receiving at least
27 minimum wages for work that was required to be done off-the-clock. In violation of the
28 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at

1 least minimum wages for work done off-the-clock.

2 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
5 payment of one (1) additional hour of pay at their regular rates of pay when they were not
6 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
7 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
8 additional hour of pay at their regular rates of pay when they did not receive a timely,
9 uninterrupted, thirty (30) minute meal period.

10 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
12 periods in accordance with the California Labor Code and applicable IWC Wage Order or
13 payment of one (1) additional hour of pay at their regular rates of pay when they were not
14 authorized and permitted to take a compliant rest period. In violation of the California Labor
15 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to
16 take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
17 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
18 they were not authorized and permitted to take a compliant rest period.

19 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 receive complete and accurate wage statements in accordance with California law. In violation
22 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
23 provided complete and accurate wage statements.

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

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1 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that they were required to pay departing employees all vested vacation
3 wages that were owed to them at the end of their employment. In violation of the California
4 Labor Code, Defendants failed to pay Plaintiff and other non-party Aggrieved Employees all
5 vested vacation wages at the end of their employment, causing a forfeiture of vested vacation
6 wages.

7 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of all wages earned upon termination of employment. In violation of the
10 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
11 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
12 vested vacation wages, sick leave pay, and/or meal and rest period premiums, within permissible
13 time periods.

14 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 timely payment of wages during their employment. In violation of the California Labor Code,
17 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
18 including, but not limited to, overtime wages, minimum wages, sick leave pay, and/or meal and
19 rest period premiums, within permissible time periods.

20 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that other non-party Aggrieved Employees were entitled to receive sick
22 leave benefits to be paid at a regular rate of pay, that included, as eligible income, all income
23 derived from commissions, incentive pay, nondiscretionary bonuses, and/or other forms of
24 compensation.

25 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that other non-party Aggrieved Employees were entitled to receive
27 reimbursement for all business-related expenses and costs they incurred during the course and
28 scope of their employment and that they did not receive reimbursement of applicable business-

1 related expenses and costs incurred.

2 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew or should have known that Defendants had a duty to provide
4 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of
5 their employment with Defendants as required by the California Wage Theft Prevention Act,
6 but willfully, knowingly, and intentionally failed to do so.

7 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
9 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
10 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
11 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they
12 were properly denied wages, all in order to increase Defendants' profits.

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

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

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

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

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- 1 (a) The aggrieved employee shall give written notice by online filing
2 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
3 the employer of the specific provisions of the California Labor Code
4 alleged to have been violated, including the facts and theories to support
5 the alleged violations.
- 6 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
7 2699.3(a) and any employer response to that notice shall be accompanied
8 by a filing fee of seventy-five dollars (\$75).
- 9 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
10 employer and the aggrieved employee by certified mail that it does not
11 intend to investigate the alleged violation within sixty (60) calendar days
12 of the postmark date of the Employee’s Notice. Upon receipt of the
13 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
14 (65) calendar days of the postmark date of the Employee’s Notice, the
15 aggrieved employee may commence a civil action pursuant to California
16 Labor Code section 2699 to recover civil penalties in addition to any other
17 penalties to which the employee may be entitled.

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

- 21 (a) The aggrieved employee or representative shall give written notice by
22 online filing to the LWDA and by certified mail to the employer of the
23 specific provisions of the California Labor Code alleged to have been
24 violated (other than those listed in Section 2699.5), including the facts
25 and theories to support the alleged violation.
- 26 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
27 2699.3(c) and any employer response to that notice shall be accompanied
28 by a filing fee of seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice. The employer shall give
3 written notice by certified mail within that period of time to the aggrieved
4 employee or representative and the agency if the alleged violation is
5 cured, including a description of actions taken, and no civil action
6 pursuant to Section 2699 may commence. If the alleged violation is not
7 cured within the 33-day period, the employee may commence a civil
8 action pursuant to Section 2699.

9 39. On March 26, 2021, Plaintiff provided written notice by online filing to the
10 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
11 Code alleged to have been violated, including facts and theories to support the alleged
12 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
13 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
14 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
15 PAGA Case Number LWDA-CM-827094-21. A true and correct copy of Plaintiff's written
16 notice to the LWDA and Defendants dated March 26, 2021, is attached hereto as "Exhibit 1."

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

20 41. Thus, Plaintiff has satisfied the administrative prerequisites under California
21 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
22 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 510,
23 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

24 42. Labor Code section 558(a) provides "[a]ny employer or other person acting on
25 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
26 provision regulating hours and days of work in any order of the Industrial Welfare Commission
27 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
28 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)

1 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
2 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
3 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
4 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
5 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
6 herself, all other non-party Aggrieved Employees, and the State of California against
7 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
8 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
9 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
10 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

11 43. Defendants, at all times relevant to this complaint, were employers or persons
12 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
13 Employees’ rights by violating various sections of the California Labor Code as set forth above.

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

17 45. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
18 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
19 attorney general, seeks assessment and collection of civil penalties for herself, all other non-
20 party Aggrieved Employees, and the State of California against Defendants for violations of
21 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516,
22 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

23 **FIRST CAUSE OF ACTION**

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

25 **(Against all Defendants)**

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

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1 47. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
3 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 227.3, 226(a),
4 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
5 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
6 Code sections not found in section 2699.5, including sections 516, 246, 1182.12, and 2810.5.

7 48. Defendants’ conduct, as alleged herein, violates numerous sections of the
8 California Labor Code, including, but not limited to, the following:

- 9 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
10 Wage Order for Defendants’ failure to compensate Plaintiff and other
11 non-party Aggrieved Employees with all required overtime pay and
12 failure to properly calculate the overtime rates paid to Plaintiff and other
13 non-party Aggrieved Employees, as set forth below;
- 14 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
15 applicable IWC Wage Order for Defendants’ failure to compensate
16 Plaintiff and other non-party Aggrieved Employees with at least
17 minimum wages for all hours worked as set forth below;
- 18 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
19 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
20 and other non-party Aggrieved Employees with meal periods, as set forth
21 below;
- 22 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
23 IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff
24 and other non-party Aggrieved Employees to take rest periods, as set forth
25 below;
- 26 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
27 IWC Wage Order for failure to provide accurate and complete wage
28 statements to Plaintiff and other non-party Aggrieved Employees, as set

1 forth below;

2 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC
3 Wage Order for failure to maintain payroll records as set forth below;

4 (g) Violation of Labor Code section 204 for failure to pay all earned wages
5 during employment, as set forth below;

6 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
7 earned wages upon termination, as set forth below;

8 (i) Violation of Labor Code section 227.3 for failure to pay Plaintiff and
9 other non-party Aggrieved Employees all vested vacation time upon
10 termination, as alleged herein;

11 (j) Violation of Labor Code section 246 for failure to properly calculate the
12 sick leave paid to other non-party Aggrieved Employees, as set forth
13 below;

14 (k) Violation of Labor Code section 2802 for failure to reimburse other non-
15 party Aggrieved Employees for all business expenses necessarily
16 incurred, as set forth below; and

17 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
18 provide written notice of information material to Plaintiff's and other
19 non-party Aggrieved Employees' employment with Defendants, as set
20 forth below.

21 **FAILURE TO PAY OVERTIME**

22 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

23 49. Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
25 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
26 shall be the . . . standard conditions of labor for employees. The employment of any employee
27 . . . under conditions of labor prohibited by the order is unlawful.”

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

5 51. Specifically, the applicable IWC Wage Order provides that Defendants are and
6 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
7 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
8 one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in
9 a day or more than forty (40) hours in a workweek.

10 52. The applicable IWC Wage Order further provides that Defendants are and were
11 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
12 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
13 An employee's regular rate of pay includes all remuneration for employment paid to, or on
14 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

15 53. California Labor Code section 510 codifies the right to overtime compensation
16 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
17 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
18 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
19 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
20 the seventh (7th) day of work.

21 54. During the relevant time period, Defendants willfully failed to pay all overtime
22 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
23 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
24 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
25 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
26 not recorded.

27 55. First, during the relevant time period, Defendants had, and continue to have, a
28 company-wide policy of rounding or underreporting employee clock-in and clock-out time

1 durations in their timekeeping system in order to limit the amount of overtime employees could
2 accrue. Defendants' rounding policy resulted in the failure to compensate Plaintiff and other
3 non-party Aggrieved Employees for all hours worked, causing Plaintiff and other non-party
4 Aggrieved Employees to not be paid overtime wages for all overtime hours they actually
5 worked.

6 56. Upon information and belief, Defendants' timekeeping practices are, and
7 continue to be, unfair and have, over time, resulted in the underpayment of wages to Plaintiff
8 and other non-party Aggrieved Employees. To the extent Defendants' timekeeping practices
9 have taken away time worked that was eligible for overtime, Plaintiff and other non-party
10 Aggrieved Employees were denied overtime pay for all hours worked.

11 57. Second, during the relevant period, Defendants had, and continue to have, a
12 company-wide policy and/or practice of requiring employees to complete work-related tasks
13 while off-the-clock. For example, other non-party Aggrieved Employees were required to make
14 deliveries to Defendants' customers and were not paid for all travel time.

15 58. Third, Defendants had, and continue to have, a company-wide policy and/or
16 practice of understaffing their locations while assigning heavy workloads and implementing
17 monthly account order quotas, resulting in a failure to provide Plaintiff and other non-party
18 Aggrieved Employees with adequate meal period coverage. Defendants also failed to adhere to
19 a schedule of meal periods, which further caused Plaintiff and other non-party Aggrieved
20 Employees to not be relieved of their duties for compliant meal periods. As a result of this lack
21 of meal period coverage, Plaintiff and other non-party Aggrieved Employees were not always
22 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive
23 a meal period. For example, at least twice per month, Plaintiff worked through her meal periods
24 in order to complete her assigned tasks and reach her productivity expectations. Additionally,
25 Plaintiff's meal periods were frequently interrupted or cut short to respond to work-related
26 inquiries from supervisors and co-workers, such as obtaining authorizations or locating work
27 orders. Thus, Plaintiff and other non-party Aggrieved Employees missed meal periods or had
28 meal periods interrupted in order to complete their assigned workloads.

1 59. Furthermore, on information and belief, because Defendants frowned upon
2 employees accruing meal period penalties, Defendants pressured Plaintiff and other non-party
3 Aggrieved Employees to clock out for meal periods, regardless of whether they had received a
4 compliant meal period, in order to strictly limit meal penalties that Defendants would otherwise
5 owe. Thus, Plaintiff and other non-party Aggrieved Employees performed work during meal
6 periods for which they were not paid.

7 60. Defendants knew or should have known that, as a result of these company-wide
8 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
9 their assigned duties off-the-clock and during meal periods, and were suffered or permitted to
10 perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved
11 Employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week
12 or more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
13 Plaintiff and other non-party Aggrieved Employees were not paid overtime wages for all of the
14 overtime hours they actually worked.

15 61. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
16 Employees the correct overtime rate for the recorded overtime hours that they generated. In
17 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees
18 commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
19 However, in violation of the California Labor Code, Defendants failed to incorporate all
20 compensation, including commissions, incentive pay, nondiscretionary bonuses, and/or other
21 forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating
22 the overtime wage rate. Therefore, during times when Defendants and other non-party
23 Aggrieved Employees worked overtime and received these other forms of pay, Defendants
24 failed to pay all overtime wages by paying a lower overtime rate than required.

25 62. For example, Defendants paid Plaintiff and other non-party Aggrieved
26 Employees commissions, as well as nondiscretionary bonuses or incentive pay for reaching
27 certain performance metrics under their Examination Incentive Program. During pay periods
28 that Plaintiff and other non-party Aggrieved Employees were paid overtime wages, Defendants

1 failed to incorporate the commissions, nondiscretionary bonus, and/or incentive pay into
2 Plaintiff's and other non-party Aggrieved Employees' regular rate of pay and, as a result, paid
3 them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants
4 paid Plaintiff and other non-party Aggrieved Employees 1.5 times their hourly rate of pay
5 instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the
6 overtime rates of pay based on all remuneration paid has resulted in an underpayment of
7 overtime wages to Plaintiff and other non-party Aggrieved Employees on a company-wide
8 basis.

9 63. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
10 the balance of overtime compensation as required by California law, violates the provisions of
11 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
12 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
13 and/or 2699(a), (f), and (g).

14 **FAILURE TO PAY MINIMUM WAGES**

15 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

16 64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
17 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
18 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
19 Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which
20 an employee is subject to the control of an employer, and includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
22 § 11040(2)(K) (defining "Hours Worked").

23 65. As set forth above, Defendants had, and continue to have, a policy and/or practice
24 of rounding or underreporting Plaintiff's and other non-party Aggrieved Employees' hourly
25 clock-in and clock-out duration times in their timekeeping system in order to limit the amount
26 of overtime employees accrued, resulting in the failure to compensate Plaintiff and other non-
27 party Aggrieved Employees for all hours worked and to not be paid minimum wage hours for
28

1 all hours they actually worked. As also set forth above, other non-party Aggrieved Employees
2 were forced to work off-the-clock performing tasks outside of their scheduled shifts, such as
3 driving to customers' homes to make deliveries, but were not paid for all of their travel time.

4 66. Additionally, as a result of Defendants' policies and/or practices of understaffing
5 while assigning heavy workloads and stringent account quotas, failing to adhere to a schedule
6 of meal periods, and resultant lack of meal period coverage, Plaintiff and other non-party
7 Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they
8 were entitled and were required to work off-the-clock. Furthermore, as stated above, on
9 information and belief, in order to limit meal penalties that Defendants would otherwise owe,
10 Defendants pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal
11 periods to reflect compliant meal periods, but required them to continue working, time for which
12 they were not paid.

13 67. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
14 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
15 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
16 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
17 1197, and 1198.

18 68. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
20 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

24 69. At all relevant times herein set forth, the applicable IWC Wage Order and
25 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
26 non-party Aggrieved Employees' employment by Defendants.

27 70. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is not
3 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
4 and the employee. Under California law, first meal periods must start after no more than five
5 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 71. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 72. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
10 and the applicable IWC Wage Order also require employers to provide a second meal period of
11 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
12 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
13 hours worked is no more than twelve (12) hours, the second meal period may be waived by
14 mutual consent of the employer and the employee only if the first meal period was not waived.

15 73. First, during the relevant time period, Defendants had, and continue to have, a
16 company-wide policy and/or practice of understaffing while assigning demanding workloads
17 and stringent account order quotas, which resulted in a lack of adequate meal period coverage
18 and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
19 uninterrupted meal periods to which they were entitled. In addition, on information and belief,
20 because Defendants frowned upon employees accruing meal period penalties, Defendants'
21 management pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal
22 periods to reflect compliant meal periods, regardless of whether they had received a compliant
23 meal period, in order to strictly limit meal penalties that would need to be paid by Defendants.

24 74. Further, Defendants had a company-wide practice and/or policy of failing to
25 adhere to a schedule of meal periods, which further caused Plaintiff and other non-party
26 Aggrieved Employees to not be relieved of their duties for compliant meal periods. As a result,
27 Plaintiff and other non-party Aggrieved Employees were forced to work in excess of five (5)
28 hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their

1 meal periods altogether in order to complete their assigned workloads. For example, Plaintiff
2 was forced to forego meal periods at least twice per month in order to complete the tasks and
3 duties Defendants assigned to her and/or due to lack of coverage. Additionally, approximately
4 twice per week, Plaintiff was forced to wait more than five (5) hours into her shift to take a meal
5 period in order to complete her assigned duties and reach her performance metrics.
6 Furthermore, Plaintiff's meal periods were regularly interrupted or cut short by management
7 and/or supervisors requesting her assistance with work-related tasks. For example, supervisors
8 would request her assistance with obtaining authorizations or locating a work order.

9 75. Moreover, Defendants did not provide other non-party Aggrieved Employees
10 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
11 day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers
12 on days that they were entitled to meal periods and were not relieved of all duties.

13 76. Defendants knew or should have known that as a result of their company-wide
14 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
15 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
16 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
17 Employees meal period premiums when meal periods were missed, late, short, and/or
18 interrupted.

19 77. Furthermore, Defendants engaged in a company-wide practice and/or policy of
20 not paying meal period premiums owed when compliant meal periods are not provided.
21 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
22 not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
23 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees premium
24 pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and other
25 non-party Aggrieved Employees at the correct rate of pay for premium wages because
26 Defendants systematically failed to include all forms of compensation, such as commissions,
27 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate
28 of pay.

1 78. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
2 Employees compliant meal periods and failed to pay the full meal period premiums due.
3 Defendants’ conduct violates the applicable IWC Wage Order, and California Labor Code
4 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
5 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
6 (f), and (g).

7 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
8 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

9 79. At all relevant times herein set forth, the applicable IWC Wage Order and
10 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and other
11 non-party Aggrieved Employees’ employment by Defendants.

12 80. At all relevant times, the applicable IWC Wage Order provides that “[e]very
13 employer shall authorize and permit all employees to take rest periods, which insofar as
14 practicable shall be in the middle of each work period” and that the “rest period time shall be
15 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
16 hours or major fraction thereof” unless the total daily work time is less than three and one-half
17 (3 ½) hours.

18 81. At all relevant times, California Labor Code section 226.7 provides that no
19 employer shall require an employee to work during any rest period mandated by an applicable
20 order of the California IWC. To comply with its obligation to authorize and permit rest periods
21 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
22 must “relinquish any control over how employees spend their break time, and relieve their
23 employees of all duties—including the obligation that an employee remain on call. A rest
24 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
25 257, 269-270 (2016).

26 82. Pursuant to the applicable IWC Wage Order and California Labor Code section
27 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
28 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a

1 required rest period was not authorized and permitted.

2 83. During the relevant time period, Defendants regularly failed to authorize and
3 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
4 per each four (4) hour period worked or major fraction thereof. As with meal periods,
5 Defendants' policies and/or practice of understaffing and assigning heavy workloads prevented
6 Plaintiff and other non-party Aggrieved Employees from being relieved of all duty to take
7 compliant rest periods. Defendants also failed to schedule rest periods and/or adhere to a
8 schedule of rest periods, which, coupled with Defendants' failure to provide adequate rest
9 period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being
10 authorized and permitted to take rest periods.

11 84. Furthermore, Defendants maintained a company-wide on-premises rest period
12 policy, which mandated that Plaintiff and/or other non-party Aggrieved Employees remain on
13 Defendants' premises during their rest periods. Because Plaintiff and/or other non-party
14 Aggrieved Employees were restricted from leaving the premises during rest periods, they were
15 denied the ability to use their rest periods freely for their own purposes, such as running personal
16 errands. Thus, Defendants effectively maintained control over Plaintiff and/or other non-party
17 Aggrieved Employees during rest periods.

18 85. As a result of Defendants' practices and policies, Plaintiff and other non-party
19 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
20 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
21 entitled. For example, during her employment, Plaintiff missed at least one (1) rest period per
22 shift due to the heavy workload and lack of rest period coverage. When she was able to take
23 her rest periods, Plaintiff's rest periods were often cut short by supervisors and co-workers
24 asking about work-related matters, such as obtaining authorizations or locating work orders.

25 86. Defendants also have engaged in a company-wide practice and/or policy of not
26 paying rest period premiums owed when compliant rest periods are not authorized and
27 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
28 Employees have not received premium pay for all missed rest periods. Alternatively, to the

1 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
2 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
3 other non-party Aggrieved Employees at the correct rate of pay for premiums because
4 Defendants failed to include all forms of compensation, such as commissions, incentive pay,
5 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

6 87. Defendants' conduct violates the applicable IWC Wage Order and California
7 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
8 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
9 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

11 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

17 89. During the relevant time period, Defendants have knowingly and intentionally
18 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
19 inaccurate wage statements. For example, Defendants issued uniform wage statements to
20 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
21 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
22 the pay period, including overtime rates of pay, and the corresponding number of hours worked
23 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
24 and 226(a)(9).

25 90. Because Defendants did not record the time Plaintiff and other non-party
26 Aggrieved Employees spent working off-the-clock, improperly rounded their total hours
27 worked, and deducted time from their records for meal periods that were interrupted and/or
28 missed (and therefore time for which they should have been paid), Defendants did not list the

1 correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved
2 Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the
3 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
4 and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list
5 the applicable hourly rates of pay in effect during the pay period and the corresponding accurate
6 number of hours worked at each hourly rate, in violation of section 226(a)(9).

7 91. Also, because Defendants did not calculate Plaintiff's and other non-party
8 Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime and sick
9 leave, Defendants did not list the correct amount of gross wages in compliance with section
10 226(a)(1). For the same reason, Defendants also failed to list the correct amount of net wages
11 in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly
12 rates in effect during the pay period, namely, correct overtime rates of pay and/or correct rates
13 of pay for paid sick leave, in violation of section 226(a)(9).

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

22 93. California Labor Code section 1174(d) provides that "[e]very person employing
23 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
24 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
25 plants or establishments at which employees are employed, payroll records showing the hours
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
27 applicable piece rate paid to, employees employed at the respective plants or
28 establishments. . . ." Defendants willfully failed to maintain accurate payroll records for

1 Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and
2 the wages paid thereto as a result of failing to record the off-the-clock hours that they worked
3 and improperly rounding Plaintiff's and non-party Aggrieved Employees' total hours worked.

4 94. California Labor Code section 1198 provides that the maximum hours of work
5 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
6 forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment
7 of any employees for longer hours than those fixed by the order or under conditions of labor
8 prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers
9 are required to keep accurate time records showing when the employee begins and ends each
10 work period and meal period. During the relevant time period, Defendants failed, on a
11 company-wide basis, to keep accurate records of work period and meal period start and stop
12 times for Plaintiff and non-party Aggrieved Employees, in violation of section 1198. Also, as
13 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff's
14 and non-party Aggrieved Employees' time records by recording that compliant meal periods
15 were taken regardless of if or when meal periods were actually taken, and thereby failed to keep
16 accurate records of meal start and end times for Plaintiff and non-party Aggrieved Employees.
17 Furthermore, in light of Defendants' failure to provide other non-party Aggrieved Employees
18 with second 30-minute meal periods to which they were entitled, Defendants kept no records of
19 meal start and end times for second meal periods.

20 95. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
21 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
22 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY ALL VESTED VACATION TIME AND PAID TIME OFF**
24 **UPON TERMINATION**

25 **VIOLATION OF LABOR CODE SECTION 227.3**

26 96. At all relevant times herein, California Labor Code section 227.3 provides that
27 whenever a contract of employment or employer policy provides for paid vacations, and an
28 employee is terminated without having taken his or her vested vacation time, all vested vacation

1 shall be paid to him or her as wages at his or her final rate in accordance with such contract of
2 employment or employer policy respecting eligibility or time served.

3 97. During the relevant time period, Defendants had a company-wide policy and
4 practice of failing to pay Plaintiff and other non-party Aggrieved Employees vested vacation
5 wages that were owed to them at the end of their employment, in violation of California Labor
6 Code section 227.3. For example, Defendants failed to pay Plaintiff the balance of her accrued
7 and unused vacation wages, which was 1.42 hours at the time of her termination per the balance
8 listed on her final wage statement dated September 30, 2020. Defendants' failure to pay
9 Plaintiff and other non-party Aggrieved Employees all vested vacation wages at the end of their
10 employment has caused a forfeiture of vested vacation wages in violation of California Labor
11 Code section 227.3.

12 98. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
13 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

15 **VIOLATION OF LABOR CODE SECTION 204**

16 99. At all relevant times herein set forth, California Labor Code section 204 requires
17 that all wages earned by any person in any employment between the 1st and the 15th days,
18 inclusive, of any calendar month, other than those wages due upon termination of an employee,
19 are due and payable between the 16th and the 26th day of the month during which the labor was
20 performed. Labor Code section 204 further provides that all wages earned by any person in any
21 employment between the 16th and the last day, inclusive, of any calendar month, other than
22 those wages due upon termination of an employee, are due and payable between the 1st and the
23 10th day of the following month.

24 100. At all relevant times herein, California Labor Code section 204 also requires that
25 all wages earned for labor in excess of the normal work period shall be paid no later than the
26 payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor
27 Code section 204 provides that the requirements of this section are deemed satisfied by the
28 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more

1 than seven (7) calendar days following the close of the payroll period.

2 101. During the relevant time period, Defendants failed to pay Plaintiff and other non-
3 party Aggrieved Employees all wages due to them, including, but not limited to, overtime
4 wages, minimum wages, sick leave pay, and/or meal and rest period premiums within any time
5 period specified by California Labor Code section 204.

6 102. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
7 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

8 **FAILURE TO PAY WAGES UPON TERMINATION**

9 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

10 103. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
11 that if an employer discharges an employee, the wages earned and unpaid at the time of
12 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
13 her employment, his or her wages shall become due and payable not later than seventy-two (72)
14 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
15 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
16 quitting.

17 104. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
18 Employees who are no longer employed by Defendants all their earned wages, including, but
19 not limited to, overtime wages, minimum wages, sick leave pay, meal and rest period premiums,
20 and/or all vested vacation wages, either at the time of discharge, or within seventy-two (72)
21 hours of their leaving Defendants' employ.

22 105. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
23 who are no longer employed by Defendants their wages earned and unpaid at the time of
24 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
25 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
26 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
27 (g).

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1 **FAILURE TO PROPERLY CALCULATE SICK LEAVE PAY**

2 **VIOLATION OF LABOR CODE SECTION 246**

3 106. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
4 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
5 days from the commencement of employment with paid sick days, to be accrued at least one
6 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
7 employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent
8 paid leave or paid time off) in each year of the employee's employment. Further, Labor Code
9 section 246(l) provides that an employer shall calculate paid sick leave by using one of two
10 calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same
11 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
12 whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick
13 time for nonexempt employees shall be calculated by dividing the employee's total wages, not
14 including overtime premium pay, by the employee's total hours worked in the full pay periods
15 of the prior 90 days of employment."

16 107. During the relevant time period, Defendants did not pay other non-party
17 Aggrieved Employees the correct sick leave rates of pay. As stated, in addition to an hourly
18 wage, Defendants paid Plaintiff and non-party Aggrieved Employees commissions, incentive
19 pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of
20 the California Labor Code, Defendants failed to incorporate all remunerations, including
21 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
22 rate of pay for purposes of calculating the sick leave rate. Therefore, during times when non-
23 party Aggrieved Employees took sick leave and received these other forms of pay, Defendants
24 failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically,
25 Defendants paid non-party Aggrieved Employees sick leave based on their hourly rate of pay
26 instead of their regular rate of pay.

27 108. Defendants' failure to properly calculate the sick leave rates of pay based on all
28 remuneration paid has resulted in an underpayment of sick leave benefits to other non-party

1 Aggrieved Employees on a company-wide basis in violation of California Labor Code 246(l).
2 Other non-party Aggrieved Employees are therefore entitled to recover civil penalties,
3 attorney's fees, costs, and interest thereon, pursuant to California Labor Code sections 248.5
4 and/or 2699(a), (f)-(g).

5 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

6 **VIOLATION OF LABOR CODE SECTION 2802**

7 109. At all times herein set forth, California Labor Code section 2802 provides that
8 an employer must reimburse employees for all necessary expenditures and losses incurred by
9 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
10 to prevent employers from passing off their cost of doing business and operating expenses on
11 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
12 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen tools
13 or equipment are required by the employer or are necessary to the performance of a job, such
14 tools and equipment shall be provided and maintained by the employer, except that an employee
15 whose wages are at least two (2) times the minimum wage may provide and maintain hand tools
16 and equipment customarily required by the particular trade or craft."

17 110. First, during the relevant time period, Defendants, on a company-wide basis,
18 required that other non-party Aggrieved Employees use their own personal cellular phones
19 and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of
20 their work-related cellular phone expenses. For example, other non-party Aggrieved Employees
21 were required to communicate with management regarding work-related matters on their
22 personal cellar phones. In addition, other non-party Aggrieved Employees were required to use
23 their personal cell phones for navigating to delivery destinations, notifying supervisors
24 regarding the completion of deliveries, and documenting the deliveries by taking photographs.
25 Although Defendants required other non-party Aggrieved Employees to utilize their personal
26 cellular phones and/or cellular data to carry out their work-related responsibilities, Defendants
27 failed to fully reimburse them for this cost.

28 ///

111. Second, Defendants had a company-wide policy of requiring other non-party Aggrieved Employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, other non-party Aggrieved Employees were sometimes required to make deliveries to customers in their personal vehicles. Although Defendants required other non-party Aggrieved Employees to use their own vehicles to carry out their work-related responsibilities, Defendants never reimbursed them for their travel expenses.

112. Defendants could have provided other non-party Aggrieved Employees with the actual tools for use on the job, such as company phones and company vehicles. Or, Defendants could have reimbursed employees for the costs of their cellular phone usage, travel expenses, and mileage. Instead, Defendants passed these operating costs off onto other non-party Aggrieved Employees. At all relevant times, other non-party Aggrieved Employees did not earn at least two (2) times the minimum wage.

113. Defendants' company-wide policy and/or practice of passing on their operating costs to other non-party Aggrieved Employees violates California Labor Code section 2802. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF
EMPLOYMENT**

VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)

114. 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 containing basic and material payroll information, including, among other things, 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

1 regular payday designated by the employer, and any allowances claims as part of the minimum
2 wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

3 115. During the relevant time period, Defendants failed to provide Plaintiff and other
4 non-party Aggrieved Employees with written notice that lists all the requisite information set
5 forth in Labor Code section 2810.5(a)(1)(A)-(C).

6 116. Defendants' failure to provide Plaintiff and other non-party Aggrieved
7 Employees with written notice of basic information regarding their employment with
8 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party
9 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
10 sections 2699(a), (f), and (g).

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

14 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
15 judgment against Defendants, jointly and severally, as follows:

16 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
17 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

19 2. That the Court declare, adjudge and decree that Defendants violated the
20 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
21 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
22 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
23 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
24 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
25 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
26 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
27 employment); 227.3 (by failing to pay all vested vacation days upon termination); 246 (by
28 failing to properly calculate sick leave pay); 1198 and the applicable IWC Wage Order (by

1 failing to provide suitable seating); 2802 (by failing to reimburse business expenses); and
2 2810.5 (by failing to provide written notice of material terms of employment).

3 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 248.5,
4 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201,
5 202, 203, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
6 2802, and 2810.5;

7 4. For attorneys' fees and costs pursuant to California Labor Code section
8 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
9 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 1174(d),
10 1182.12, 1194, 1197, 1198, 2802 and 2810.5;

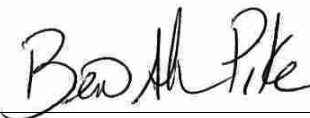
11 5. For pre-judgment and post-judgment interest as provided by law; and

12 6. For such other and further relief as the Court may deem equitable and
13 appropriate.

14
15 Dated: June 1, 2021

Respectfully submitted,

16 Capstone Law APC

17
18 By: 

19 Bevin Allen Pike
20 Daniel Jonathan
21 Trisha K. Monesi
22 Attorneys for Plaintiff Leslie McGary
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EXHIBIT “1”

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

March 26, 2021

VIA ONLINE SUBMISSION

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

Subject: *Leslie McGary v. Shield-California Health Care Center, Inc.*

Dear PAGA Administrator:

This office represents Leslie McGary in connection with her claims under the California Labor Code. Ms. McGary was an employee of SHIELD-CALIFORNIA HEALTH CARE CENTER, INC. (“SHIELD”).

The employer may be contacted directly at the address below:

SHIELD-CALIFORNIA HEALTH CARE CENTER, INC.
27911 FRANKLIN PARKWAY
VALENCIA CA 91355

Ms. McGary 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. McGary seeks relief on behalf of herself, the State of California, and other persons who are or were employed by SHIELD as a non-exempt, hourly paid employee in California 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.

SHIELD employed Ms. McGary as an hourly paid, non-exempt employee from approximately October 2012 to October 2020. Ms. McGary worked for SHIELD as a Utilization Management Examiner at its corporate headquarters in Valencia, California. During her employment, Ms. McGary typically worked eight (8) or more per day, five (5) days per week. At the time her employment ended, Ms. McGary was compensated approximately \$17.38 per hour. Her job duties included, without limitation, processing billing to insurance companies, determining customers’ insurance eligibility, and verifying the validity of customer prescriptions.

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

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

SHIELD is a California corporation and a provider of medical products and devices for patients and medical professionals, specializing in incontinence, urological, and ostomy supplies. Upon information and belief, SHIELD maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Valencia, California, for all non-exempt, hourly paid employees working for SHIELD in California, including Ms. McGary and other aggrieved employees. At all relevant times, SHIELD issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. McGary and other aggrieved employees, regardless of its location or position.

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

SHIELD willfully failed to pay all overtime wages owed to Ms. McGary and other aggrieved employees. During the relevant time period, Ms. McGary 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.

¹ These facts, theories, and claims are based on Ms. McGary’s experience and counsel’s review of those records currently available relating to Ms. McGary’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. McGary 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.

First, during the relevant time period, SHIELD had, and continues to have, a company-wide policy of rounding or underreporting employee clock-in and clock-out time durations in its timekeeping system in order to limit the amount of overtime employees could accrue. SHIELD's rounding policy resulted in the failure to compensate Ms. McGary and other aggrieved employees for all hours worked, causing Ms. McGary and other aggrieved employees to not be paid overtime wages for all overtime hours they actually worked.

Upon information and belief, SHIELD's timekeeping practices are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Ms. McGary and other aggrieved employees. To the extent SHIELD's timekeeping practices have taken away time worked that was eligible for overtime, Ms. McGary and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant period, SHIELD had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. For example, other aggrieved employees were required to make deliveries to SHIELD's customers and were not paid for all travel time.

Third, SHIELD had, and continues to have, a company-wide policy and/or practice of understaffing its locations, while assigning heavy workloads and implementing monthly account order quotas, resulting in a failure to provide Ms. McGary and other aggrieved employees with adequate meal period coverage. SHIELD also failed to adhere to a schedule of meal periods, which further caused Ms. McGary and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Ms. McGary and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, at least twice per month, Ms. McGary worked through her meal periods in order to complete her assigned tasks and reach her productivity expectations. Additionally, Ms. McGary's meal periods were frequently interrupted or cut short to respond to work-related inquiries from supervisors and co-workers, such as obtaining authorizations or locating work orders. Thus, Ms. McGary and other aggrieved employees missed meal periods or had meal periods interrupted in order to complete their assigned workloads.

Furthermore, on information and belief, because SHIELD frowned upon employees accruing meal period penalties, SHIELD pressured Ms. McGary and other aggrieved employees to clock out for meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that SHIELD would otherwise owe. Thus, Ms. McGary and other aggrieved employees performed work during meal periods for which they were not paid.

SHIELD knew or should have known that, as a result of these company-wide practices and/or policies, Ms. McGary and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. McGary 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. McGary and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SHIELD did not pay Ms. McGary and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SHIELD paid Ms. McGary and other aggrieved employees commissions, incentive pay, nondiscretionary

bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SHIELD failed to incorporate all compensation, including commissions, 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 Ms. McGary and other aggrieved employees worked overtime and received these other forms of pay, SHIELD failed to pay all overtime wages by paying a lower overtime rate than required.

For example, SHIELD paid Ms. McGary and other aggrieved employees commissions, as well as nondiscretionary bonuses or incentive pay for reaching certain performance metrics under its Examination Incentive Program. During pay periods that Ms. McGary and other aggrieved employees were paid overtime wages, SHIELD failed to incorporate the commissions, nondiscretionary bonus, and/or incentive pay into Ms. McGary's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, SHIELD paid Ms. McGary and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. SHIELD's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. McGary's and other aggrieved employees on a company-wide basis.

SHIELD's failure to pay Ms. McGary 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. McGary 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 IWC Wage Order 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").

As set forth above, SHIELD had, and continue to have, a policy and/or practice of rounding or underreporting Ms. McGary's and other aggrieved employees' hourly clock-in and clock-out duration times in its timekeeping system in order to limit the amount of overtime employees accrued, resulting in the failure to compensate Ms. McGary and other aggrieved employees for all hours worked and to not be paid minimum wage hours for all hours they actually worked. As also set forth above, other aggrieved employees were forced to work off-the-clock performing tasks outside of their scheduled shifts, such as driving to customers' homes to make deliveries, but were not paid for all of their travel time.

Additionally, as a result of SHIELD's policies and/or practices of understaffing while assigning heavy workloads and stringent account quotas, failing to adhere to a schedule of meal periods, and resultant lack of meal period coverage, Ms. McGary and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Furthermore, as stated above, on information and belief, in order to limit meal penalties that SHIELD would otherwise owe, SHIELD pressured Ms. McGary and other aggrieved employees

to clock out for meal periods to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Thus, SHIELD did not pay minimum wages for all hours worked by Ms. McGary and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SHIELD 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, and 1197.1. Accordingly, SHIELD regularly failed to pay at least minimum wages to Ms. McGary 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. McGary 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, 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.

First, during the relevant time period, SHIELD had, and continues to have, a company-wide policy and/or practice of understaffing while assigning demanding workloads and stringent account order quotas, which resulted in a lack of adequate meal period coverage and prevented Ms. McGary and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, on information and belief, because SHIELD frowned upon employees accruing meal period penalties, SHIELD's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by SHIELD.

Further, SHIELD had a company-wide practice and/or policy of failing to adhere to a schedule of meal periods, which further caused Ms. McGary and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Ms. McGary and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether in order to complete their assigned workloads. For example, Ms. McGary was forced to forego meal periods at least twice per month in

order to complete the tasks and duties SHIELD assigned to her and/or due to lack of coverage. Additionally, approximately twice per week, Ms. McGary was forced to wait more than five (5) hours into her shift to take a meal period in order to complete her assigned duties and reach her performance metrics. Furthermore, Ms. McGary's meal periods were regularly interrupted or cut short by management and/or supervisors requesting her assistance with work-related tasks. For example, supervisors would request her assistance with obtaining authorizations or locating a work order.

Moreover, SHIELD did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) hours or more per day, but were not provided an uninterrupted second 30-minute meal period. Ms. McGary 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.

SHIELD knew or should have known that as a result of its company-wide policies and/or practices, that Ms. McGary and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SHIELD further knew or should have known that it did not pay Ms. McGary and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

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

Accordingly, SHIELD failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. McGary and other aggrieved employees are 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, 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, SHIELD regularly failed to authorize and permit Ms. McGary 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, SHIELD’s policies and/or practice of understaffing and assigning heavy workloads prevented Ms. McGary and other aggrieved employees from being relieved of all duty to take compliant rest periods. SHIELD also failed to schedule rest periods and/or adhere to a schedule of rest periods, which, coupled with SHIELD’s failure to provide adequate rest period coverage, further led to Ms. McGary and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, SHIELD maintained a company-wide on-premises rest period policy, which mandated that Ms. McGary and/or other aggrieved employees remain on SHIELD’s premises during their rest periods. Because Ms. McGary and/or 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, such as running personal errands. Thus, SHIELD effectively maintained control over Ms. McGary and/or other aggrieved employees during rest periods.

As a result of SHIELD’s practices and policies, Ms. McGary and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during her employment, Ms. McGary missed at least one (1) rest period per shift due to the heavy workload and lack of coverage. When she was able to take her rest periods, Ms. McGary’s rest periods were often cut short by supervisors and co-workers asking about work-related matters, such as obtaining authorizations or locating work orders.

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

Accordingly, SHIELD failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. McGary and other aggrieved employees are 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. SHIELD has not provided Ms. McGary 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, SHIELD has knowingly and intentionally provided Ms. McGary and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SHIELD issued uniform wage statements to Ms. McGary and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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, SHIELD violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SHIELD did not record the time Ms. McGary and other aggrieved employees spent working off the clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SHIELD did not list the correct amount of gross wages and net wages earned by Ms. McGary and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SHIELD failed to accurately list the total number of hours worked by Ms. McGary 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).

Moreover, because SHIELD did not calculate Ms. McGary's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime and/or paid sick leave, SHIELD did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SHIELD also failed to list the correct amount of net wages in violation of section 226(a)(5). SHIELD also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and/or correct rates of pay for paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, 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 name and address of the legal entity that is the employer; 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 the hours they 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), SHIELD willfully failed to maintain accurate payroll records for Ms. McGary 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 and improperly rounding Ms. McGary's and other aggrieved employees' total hours 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, SHIELD failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. McGary and other aggrieved employees, in violation of section 1198. Also, as stated, SHIELD engaged in a company-wide practice and/or policy of falsifying Ms. McGary's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. McGary and other aggrieved employees. Furthermore, in light of SHIELD's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, SHIELD kept no records of meal start and end times for second meal periods.

Because SHIELD failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. McGary 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. McGary 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. McGary 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, SHIELD failed to pay Ms. McGary and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Ms. McGary 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.

SHIELD willfully failed to pay Ms. McGary and other aggrieved employees who are no longer employed by SHIELD all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or all vested vacation wages, either at the time of discharge, or within seventy-two (72) hours of their leaving SHIELD's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. McGary 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 § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, SHIELD had a company-wide policy and practice of failing to pay Ms. McGary and other aggrieved employees vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. For example, SHIELD failed to pay Ms. McGary the balance of her accrued and unused vacation wages, which was 1.42 hours at the time of her termination per the balance listed on her final wage statement dated September 30, 2020. SHIELD's failure to pay Ms. McGary and other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

Ms. McGary and other aggrieved employees are therefore 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 § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, SHIELD did not pay other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, SHIELD paid Ms. McGary and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SHIELD failed to incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, SHIELD failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, SHIELD paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

SHIELD's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 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."

First, during the relevant time period, SHIELD, on a company-wide basis, required that other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, other aggrieved employees were required to communicate with management regarding work-related matters on their personal cellular phones. In addition, other aggrieved employees were

required to use their personal cell phones for navigating to delivery destinations, notifying supervisors regarding the completion of deliveries, and documenting the deliveries by taking photographs. Although SHIELD required other aggrieved employees to utilize their personal cellular phones and/or cellular data to carry out their work-related responsibilities, SHIELD failed to fully reimburse them for this cost.

Second, SHIELD had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, other aggrieved employees were sometimes required to make deliveries to customers in their personal vehicles. Although SHIELD required other aggrieved employees to use their own vehicles to carry out their work-related responsibilities, SHIELD never reimbursed them for their travel expenses.

SHIELD could have provided other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles. Or, SHIELD could have reimbursed employees for the costs of their cellular phone usage, travel expenses, and mileage. Instead, SHIELD passed these operating costs off onto other aggrieved employees. At all relevant times, other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, SHIELD 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. 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.

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

Ms. McGary and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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.” SHIELD, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. McGary’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. McGary 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. McGary, 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 SHIELD for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 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. McGary seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. McGary’s reasonable attempt to settle her dispute with SHIELD prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform SHIELD of Ms. McGary’s aforementioned grievances and the proposed remedies as detailed below, while affording SHIELD a reasonable opportunity to satisfy Ms. McGary’s demands.

Demand is hereby made that SHIELD shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. SHIELD shall pay Ms. McGary and all other aggrieved employees employed by SHIELD at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SHIELD shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all vested vacation pay.
3. SHIELD shall conduct a survey or interview all current and former aggrieved employees in California who worked for SHIELD in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and

permitted; and the number of employees who were required to pay for cellular phone expenses, travel, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. SHIELD shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SHIELD also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SHIELD shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for SHIELD's benefit, including, but not limited to, cellular phone expenses, travel expenses, mileage, or other expenditures, as required by Labor Code section 2802.
6. SHIELD shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. SHIELD shall provide Ms. McGary and all aggrieved employees employed by SHIELD at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. SHIELD shall pay former aggrieved employees their vested vacation wages at their final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served, as required by Labor Code section 227.3.
9. SHIELD shall properly calculate aggrieved employees' overtime and sick leave rates of pay based on all remuneration paid, pursuant to Labor Code sections 510 and 246(l).
10. SHIELD shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. SHIELD shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
12. SHIELD shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 4-2001, section 20.

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

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

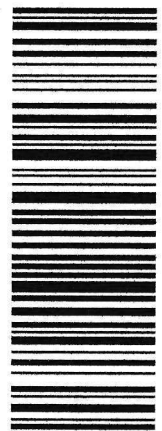
Best Regards,

A handwritten signature in black ink, appearing to read 'Michelle Kennedy', with a stylized, cursive script.

Michelle Kennedy

Copy: SHIELD-CALIFORNIA HEALTH CARE CENTER, INC. (via U.S. Certified Mail)

CERTIFIED MAIL



7020 1290 0001 8879 1975

one
LAW APC
ary Park East, Ste 1000
s, CA 90067

SHIELD-CALIFORNIA HEALTH CARE CENTER, INC.
27911 FRANKLIN PARKWAY
VALENCIA CA 91355



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- Print your name and address on the reverse so that we can return the card to you.
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CENTER, INC.
27911 FRANKLIN PARKWAY
VALENCIA CA 91355



9590 9402 1512 5362 2707 07

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

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VALENCIA CA 91355

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SHIELD-CALIFORNIA HEALTH CARE
CENTER, INC.
27911 FRANKLIN PARKWAY
VALENCIA CA 91355



9590 9402 1512 5362 2707 07

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1975

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Don Thomas

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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