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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 MELISSA DUFFELL, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 WAG HOTELS, INC., a Corporation; and
20 Does 1 through 50, Inclusive,

21 Defendants.

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

1.Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802, California
Code of Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

BY FAX

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

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Wag Hotels, Inc. (referred to as
8 "DEFENDANT") seeking only to recover PAGA civil penalties for herself, and on behalf of all
9 current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does not
10 seek to recover anything other than penalties as permitted by California Labor Code §
11 2699. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the civil
13 penalties permitted by California Labor Code § 2699.

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

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

22 THE PARTIES

24 4. Defendant Wag Hotels, Inc. is a Corporation that at all relevant times mentioned
25 herein conducted and continues to conduct substantial and regular business throughout
26 California.

27 5. DEFENDANT belongs to the Hotel & Hospitality industry and specializes in
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1 Boarding, Dog Daycare, Grooming and being known as a Pet Hotel.

2 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay and meal and rest periods from July of 2017 to February of
4 2021. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
5 non-exempt employee paid in whole or in part on an hourly basis and received additional
6 compensation from DEFENDANT in the form of non-discretionary incentive wages.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to herself
10 and all individuals who are or previously were employed by DEFENDANT in California and
11 who were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the time
12 period of April 29, 2020 until a date as determined by the Court (the "PAGA PERIOD").

13 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
17 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
18 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
19 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
20 the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are

1 responsible in some manner for one or more of the events and happenings that proximately
2 caused the injuries and damages hereinafter alleged.

3 10. The agents, servants and/or employees of the Defendants and each of them acting
4 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
5 agent, servant and/or employee of the Defendants, and personally participated in the conduct
6 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
7 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
8 Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
9 for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants
10 and/or employees.

11 12 **THE CONDUCT**

13 11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
14 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
15 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
16 calculate minimum and overtime wages for time worked by PLAINTIFF and other
17 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
18 compensation. Specifically, during the PAGA PERIOD, DEFENDANT required PLAINTIFF
19 and other AGGRIEVED EMPLOYEES to wait in line and submit to mandatory temperature
20 checks for COVID-19 screening and also complete a COVID-19 questionnaire regarding
21 whether these employees had any symptoms prior to clocking into DEFENDANT's timekeeping
22 system for the workday. This additional time worked was work performed subject to
23 DEFENDANT's control and for DEFENDANT's benefit. Consequently, all this time constitutes
24 "hours worked" and is therefore compensable. DEFENDANT's policy and practice to not pay
25 employees for compensable work time is evidenced by DEFENDANT's business records. As
26 a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for
27 working without compensation at the correct minimum wage and overtime rates.

1 DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
2 compensation for all time worked in accordance with applicable law is evidenced by
3 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
4 purposefully avoid the payment of the correct compensation as required by California law which
5 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
6 complied with the law.

7 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
8 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
9 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
10 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
11 time worked, meaning the time during which an employee was subject to the control of an
12 employer, including all the time the employee was permitted or suffered to permit this work.
13 DEFENDANT required these employees to work off the clock without paying them for all the
14 time they were under DEFENDANT's control, including, but not limited to, time spent
15 undergoing mandatory drug testing or any other testing and/or examination required as a
16 condition of employment. Specifically, DEFENDANT required PLAINTIFF to work while
17 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
18 was from time to time interrupted by work assignments. Also, DEFENDANT, as a matter of
19 established company policy and procedure, administered a uniform practice of rounding the
20 actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always
21 to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and
22 the AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been
23 paid for actual recorded time rather than "rounded" time. As a result, PLAINTIFF and other
24 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by working
25 without their time being accurately recorded and without compensation at the applicable
26 minimum wage and overtime rates. To the extent that the time worked off the clock did not
27 qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for the
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1 time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

2 13. State law provides that employees must be paid overtime and meal and rest break
3 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
5 tied to specific elements of an employee's performance.

6 14. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
7 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
8 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
9 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
10 hourly basis with incentive compensation when the employees met the various performance
11 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
12 overtime and premiums for meal and rest break violations to PLAINTIFF and other
13 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
14 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
15 premium pay for meal and rest break violations. Management and supervisors described the
16 incentive program to potential and new employees as part of the compensation package. As a
17 matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
18 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted
19 in an underpayment of overtime compensation and meal and rest break premium pay to
20 PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANT underpaid meal and rest
21 break penalties and sick pay wages to PLAINTIFF and other AGGRIEVED EMPLOYEES by
22 failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF and other
23 non-exempt employees regularly earn non-discretionary remuneration, including but not limited
24 to, incentives, shift differential pay, and bonuses. Rather than pay meal and rest break penalties
25 and sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and
26 other AGGRIEVED EMPLOYEES at their base rates of pay. The failure to do so has resulted
27 in a systematic underpayment of compensation to PLAINTIFF and other AGGRIEVED
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1 EMPLOYEES by DEFENDANT.

2 15. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
4 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
6 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
7 compensation as required by California law which allowed DEFENDANT to illegally profit and
8 gain an unfair advantage over competitors who complied with the law. To the extent equitable
9 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
10 PAGA PERIOD should be adjusted accordingly.

11 16. As a result of their rigorous work schedules, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
13 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
15 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
16 DEFENDANT failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with a
17 second off-duty meal period from time to time in which these employees were required by
18 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
20 accordance with DEFENDANT's corporate policy and practice.

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

16 18. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
17 employees with an accurate itemized wage statement in writing showing, among other things,
18 gross wages earned and all applicable hourly rates in effect during the pay period and the
19 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
20 failed to provide to PLAINTIFF and the other AGGRIEVED EMPLOYEES wage statements
21 that identify the correct gross and net wages earned, the applicable number of hours worked and
22 rates of pay. PLAINTIFF and the other AGGRIEVED EMPLOYEES were paid on an hourly
23 basis. As such, the wage statements should reflect all applicable hourly rates during the pay
24 period and the total hours worked, and the applicable pay period in which the wages were
25 earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT
26 provided to PLAINTIFF and other AGGRIEVED EMPLOYEES failed to identify such
27 information. More specifically, the wage statements failed to identify the accurate total hours
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1 worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). When the hours
2 shown on the wage statements were added up, they did not equal the actual total hours worked
3 during the pay period. Aside, from the violations listed above in this paragraph, DEFENDANT
4 failed to issue to PLAINTIFF and other AGGRIEVED EMPLOYEES an itemized wage
5 statement that lists all the requirements under California Labor Code 226 *et seq.*

6 19. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
7 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
8 and other non-exempt employees earned non-discretionary remuneration, including but not
9 limited to, incentives and bonuses. Rather than pay sick pay at the regular rate of pay,
10 DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at
11 their base rates of pay.

12 20. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
13 employment are due and payable twice during each calendar month, on days designated in
14 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
15 requires employers to pay employees all wages owed within eleven (11) days of the close of the
16 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
17 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close of
18 the payroll period.

19 21. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
20 to collect or receive from an employee any part of wages theretofore paid by said employer to
21 said employee.” DEFENDANT made unlawful deductions from compensation payable to
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
23 deductions from compensation payable to PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable pay
25 period and upon termination.

26 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
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1 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
2 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
3 2802, employers are required to indemnify employees for all expenses incurred in the course
4 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
5 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
6 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
7 directions of the employer, even though unlawful, unless the employee, at the time of obeying
8 the directions, believed them to be unlawful."

9 23. In the course of their employment PLAINTIFF and other AGGRIEVED
10 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
11 cellular phones as a result of and in furtherance of their job duties as employees for
12 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
13 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
14 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
15 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
16 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
17 for the benefit of DEFENDANT.

18 24. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
19 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
20 to accurately calculate and record the correct overtime rate for the overtime worked by
21 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
22 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
23 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
24 calculate and/or pay all required overtime compensation for work performed by the
25 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
26 promulgated thereunder as herein alleged.

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

5
6 **JURISDICTION AND VENUE**

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

18 28. PLAINTIFF realleges and incorporates by this reference, as though fully set
19 forth herein, the prior paragraphs of this Complaint.

20 29. PAGA is a mechanism by which the State of California itself can enforce state
21 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
22 the state's labor law enforcement agencies. An action to recover civil penalties under
23 PAGA is fundamentally a law enforcement action designed to protect the public and not to
24 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
25 but to create a means of "deputizing" citizens as private attorneys general to enforce the
26 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
27 public interest to allow aggrieved employees, acting as private attorneys general to recover
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1 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

3 30. PLAINTIFF, and such persons that may be added from time to time who
4 satisfy the requirements and exhaust the administrative procedures under the Private
5 Attorney General Act, brings this Representative Action on behalf of the State of California
6 with respect to herself and all individuals who are or previously were employed by
7 DEFENDANT in California and who were classified as non exempt employees
8 ("AGGRIEVED EMPLOYEES") during the time period of April 29, 2020 until a date as
9 determined by the Court (the "PAGA PERIOD").

10 31. On April 29, 2021, PLAINTIFF gave written notice by electronic mail to the
11 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
12 employer of the specific provisions of this code alleged to have been violated as required by
13 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
14 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
15 now commence a representative civil action under PAGA pursuant to Section 2699 as the
16 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
17 defined.

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

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6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

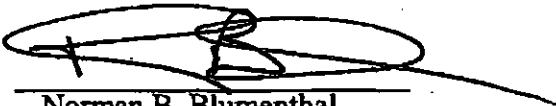
9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

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

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

15 Dated: July 16, 2021

16 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
17 LLP

18 By: 

19 Norman B. Blumenthal
20 Attorneys for Plaintiff

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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).